

MT LEGISLATIVE HISTORY

Chapter 588 1983

Bill H (S) 436

Original bill & hist. C

H. Committee on State Administration

S. Committee on Business & Industry

Hearing Date(s) MAR 14 ✓C

Hearing Date(s) FEB 19 ✓C

MAR 23 ✓C

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Date Out MAR 23 ✓C

FEB 19 ✓C

Did this bill originate in an interim committee? Yes No

Committee

Report

together.

CHAIRMAN JOE BRAND asked Senator Eck, this bill does not have a limit of what the one-third is going to be does it. Couldn't this be a large amount of money? Senator Eck replied that this was correct. In fact it would be a substantial amount of money in most cases.

Chairman Brand asked if the longevity increase and cost of living increases would be deducted from their pension. Senator Eck replied that they would not.

Chairman Brand asked how many are picking up on the University system right now under the one-fourth. Mr. Bucklan replied that he could only speak for the University of Montana and they probably currently have 32 faculty who are 65 or older and it would be fair to assume that most of those people are eligible for retirement now. If you were to go down to the 60 years of age level we would be talking closer to 70 faculty members. Many of those people would be eligible but many of them would not choose to do this. It is not an attractive program under the current arrangement.

Chairman Brand asked how many people Mr. Bucklan thought would take advantage of this under this system if it they won't retire now. Mr. Bucklan said that he has talked to 12-15 people who are fully eligible to retire and under this kind of program would give it serious consideration.

Chairman Brand asked Mr. Bucklan about getting younger professors on board in the system, what is the average age of the professors now? Mr. Bucklan said that it would be in the mid 40's. Chairman Brand then asked Mr. Bucklan and Mr. Krause to leave a break-down of the ages of the professors at both universities for the committee members to review.

Mr. McGarvey said that the local school teachers support this concept very much and they would also be in favor of the early retirement even though most of this discussion has been around the universities in the state.

THERE BEING NO ADDITIONAL QUESTIONS FROM THE MEMBERS OF THE COMMITTEE CHAIRMAN BRAND CLOSED ON SENATE BILL 166.

SENATE BILL 436

SENATOR CHET BLAYLOCK, sponsor of Senate Bill 436 gave an opening statement mentioning that this bill is very controversial and it is the re-establishment of the Public Service Commission after the Sunset Audit. A lot of people have questioned things because there are alot of changes in this bill from the way the law was, as there is after any legislative audit. It is the duty of the

Legislative Audit Committee, upon completion of the Sunset Audit and Review to make a report to the legislature for continuation, modification or termination. He mentioned that sections 1 and 2 re-establish the Public Service Commission. He also mentioned the way that rates will be set other than on the federal level.

Section 4 makes what we did a couple years ago permanent. By saying that the cities could allow increases at 12 percent on their water and sewer rates. They can do that in each 12 month period.

The language on page 8 will undo what the Supreme Court decision said had to be taken out. This refers to the public county sewer districts and says that they would have to be under the Public Service Commission. This was not the case before. The PSC does not really want this responsibility. This language would take these people out from under the Public Service Commission jurisdiction.

He then went through the bill section by section.

PROPOSERS

THOMAS SCHNIEDER, Public Service Commission spoke in support of this bill. He mentioned that this bill comes after a full blown sunset audit. He said they feel that this is very solid and do not oppose any of the amendments that Senator Blaylock has mentioned here today.

OPEN WINEBRENNER, Public Service Commission spoke as the Staff Attorney for this office. She passed out a summary of the outline for this bill. See EXHIBIT E.

JIM HUGHES, Mountain Bell Telephone, spoke in support of the bill. He complimented the Interim Committee and Audit Committee. The bill may not cover everything but we support it as presented here today. He mentioned that they were in concurrence with the Public Service Commission's proposed amendments.

MIKE STEPHENS, Montana Association of Counties, spoke in support of the bill and the amendments proposed by Senator Blaylock regarding the local governments. Particularly, placing the language covering counties and how they carry out the bidding process as far as garbage haulers are concerned. This would be also to include making the duration of the Class D Certificate the entire duration of the contract. We feel that this fits very well into the bidding process. This makes it more workable than previously.

MORRISON GULLICKSON, United Transportation Union spoke in support of the bill. They support the bill as it was amended in the Senate.

JOHN ALLEN, Montana Consumer Counsel spoke in support of the bill. Direction was given to the part of the bill dealing with the

municipalities. We are especially in favor of this bill because of the 12 percent increase that will be allowed by the smaller cities and towns for their sewer and water rates. We thought that there may be some potential for abuse but we have no opposition to the bill now. There was some abuse in the past but the language that was put into this bill would protect the people from that occurring again.

ALEX HANSON, Montana League of Cities and Towns spoke in support of this bill. He referred to the language on pages 7 through 11 and mentioned that this area was covered under another bill which was presented in the 1981 legislative session. This bill has worked and he mentioned that there were in fact some cases of abuse in the past but that this language would clear that up. We want this bill to work and we worked with the Public Service Commission on the amendments that they presented here today. We think that this is a good solid process.

THERE WERE NO ADDITIONAL PROPONENTS TO SENATE BILL 436.

OPPONENTS

REPRESENTATIVE PAUL PISTORIA stated that he was not entirely an opponent to the whole bill. He is opposing only a portion of the bill which deals with the 12 percent increase allowed to the small cities and towns, page 10 through 12. He said that he had opposed the bill in the Senate and would continue to do so. No where in either of these two bills does a party have the chance to appeal to the District Court. If someone did have to appeal, they couldn't stand the cost. This is covered in House Bill 765 but it is not covered in this one unless I misread it. He mentioned that he was aware of three cities that really abused this in the past. There were probably others but he didn't want to mention them here now. Even if you amend this bill to include the appeal process to the District Court, you would be forcing a party to pay all the fees and costs. Under the present law, which expires July 1, 1983 it would allow the Consumer Counsel to at least hold hearings and find out if they were doing the wrong thing. Now, it is going to be worse if you give it to them permanently. He mentioned that he would be offering some amendments at a later time because he felt that the committee would not be acting on the bill today. These amendments would cover, appeal to the District Court; first class cities; and possibly some others.

THOMAS DOWLING, Montana Railroad Association, indicated their not necessarily strong proponents or opponents but they have some limited concerns with the bill. We liked the bill as it was presented to the Senate by the Audit Committee. I am asking you to unamend the bill. Particularly section 19 which deals with the investigation and enforcement ability for the railroad to the Public Service Commission. I am sure that you are going to be told that the Governor's budget has funded the safety inspection

and that is true for 1983 and 1984. There is fifty percent federal funding, which I am told by the Association of American Railroads will disappear in fiscal year 1985.

The title of the bill is inaccurate. When the Senate took into consideration the changes before it they did not correct the title.

I realize the Audit Committee worked for a year and half on the proposed changes and we would ask you to recognize the efforts applied by these people and reinstate the provisions that were amended out on page 26 through page 27, line 18.

BILL ROMINE, representing the Solid Waste Contractor's Association, (the garbage collectors), we do not appear in opposition to the bill entirely and if it were not for the amendments we would not be in opposition at all. We do oppose an attempt to amend back into this bill the sections concerning the garbage haulers and local, county and city contracts. You have in this bill a myriad number of regulated companies being addressed. There are many substantive changes in this bill regarding the various areas which are being addressed. I would say that there should be many separate bills put into the legislature for the many areas that we have in this one bill. They are all effecting different areas of the Public Service Commission. In fact, the amendment that is being proposed by Senator Blaylock was a special bill in this House, House Bill 186. That bill addressed the same purpose and subject, we had a special hearing on that bill, proponents and opponents appeared on that bill and the committee tabled that bill. But here we are again arguing the same problem in a bill that is 27 pages long and contains 22 sections. He mentioned the problem which had occurred in Red Lodge and explained that this issue had some legitimacy to it but the legislature has passed House Bill 73 which provides that the PSC may now consider competition as a grounds for granting a PSC permit on a class D garbage carrier. They had no such authority before. House Bill 73 was supported by the industry, and by the Public Service Commission.

SANDRA MINTYDLA, Lewistown, Montana spoke in opposition to the bill. She said that they would like to see the bill amended back and reinsert the portion on rate regulations. We oppose the section for adding local government for the reasons that Mr. Romine mentioned and others have mentioned earlier. We feel that the rate regulations could be a very inexpensive managed form of regulating us if we were given similar rights to the cities with their sewer and water regulations. We would urge you to reinsert the rate regulation as best as possible to the way that it was originally drafted.

THERE BEING NO ADDITIONAL OPPONENTS TO THE BILL CHAIRMAN BRAND ASKED SENATOR BLAYLOCK TO CLOSE.

Senator Blaylock made a closing statement. He cleared up the matter about House Bill 765 which had been a concern of Representative Pistoria. This language is still in the statute, it is not all in this bill. He mentioned that he was in concurrence on the issue about the appeal process to the District Court.

COMMITTEE QUESTIONS

REPRESENTATIVE PAUL PISTORIA asked anyone that could answer about 69-3-101, MCA, where is this section covered in the bill before us? Opel Winebrenner replied that it was on page 7, line 7 through 11. This made the statute permanent and it is in the code book currently.

REPRESENTATIVE FRANCIS KOEHNKE asked Senator Blaylock about the title where the language was changed on line 16. Senator Blaylock explained that this refers to the garbage haulers.

Representative Koehnke inquired about the process for other boards to be sunsetted if they were not included in this bill. Senator Blaylock said that it would be covered under the present Sunset laws.

CHAIRMAN JOE BRAND asked why is the fee being set by the commission rather than by law as it is now? Senator Blaylock replied that the fees that they are using now are not covering the costs of what they are doing. They would like to have them commensurate with what it is costing to do this.

Chairman Brand asked if there are any fees that are over the cost. Ms. Winebrenner replied that the fees were taken out because they would like every fee that is charged by a state agency to be set commensurate with costs. The commission would by rule set those fees at what we would hope would cover the cost of whatever we are doing. This was a recommendation of the Legislative Audit Office.

Chairman Brand said that he was talking about all the various fees that are mentioned in the bill. What this bill would be doing is taking away the power from the legislature and placing it with the commission. Mr. Opitz said that this could still be thrown out if the committee wanted. The danger in this would be that they would become out-dated because of costs that the commission incurs.

REPRESENTATIVE JERRY DRISCOLL asked the Consumer Counsel about the municipal utilities. Has there been any municipality that has not raised the rates to the 12 percent level in the past two years. The Consumer Counsel replied that their records indicate that about seventy communities have used this bill. I am not sure how many communities are out there, I have heard that there are about 130, therefore there are some which have not used this.

Representative Driscoll asked Senator Blaylock about the language on page 9. If the PSC were to order a temporary decrease and later

reversed itself, are they going to charge the consumer interest? Senator Blaylock replied, yes if they order a decrease and then they find that it was not justified, then they can put on a surcharge and they can charge interest to the customer. It would be the same as they would do on the other side.

Representative Driscoll said that he did not understand the reason for the interest part. Mr. Schneider replied that the way the law is now, on a temporary rate increase, the Commission is required by law to order a rebate with interest to the consumer and this would be an identical situation on the flip side. We would adjust the rate and it would include interest.

Representative Driscoll asked how the consumer would see it working, is this for a set time period. Mr. Schneider said that was correct and it was the reason that it is important because it would be for a set time period. Otherwise if it were just done by rate basis, it would not expire.

CHAIRMAN JOE BRAND asked Mr. Schneider which way it normally went. Is it usually for the utility or is it for the consumer when the adjustments are made on the rates. Mr. Schneider replied that in the high inflationary periods that we have had over the last few years, it has been the utility getting the interest. That situation is reversing now and that is why we think that it is so important to have the ability to order a decrease.

REPRESENTATIVE PAUL PISTORIA asked Mr. Schneider if it is true now that under the 12 percent law, the city files a form that they are contemplating needing the raise. In the Lewistown case, who found that they had a reserve? Couldn't this be abused more the other way with what you are trying to do here. Mr. Allen replied that in the Lewistown situation was an application before the Public Service Commission. If this legislation was passed, the application would still go before the PSC because they were asking for more than a 12 percent increase. Current legislation requires the city to file with the PSC but not this extent. This only applies when it is over 12 percent of an increase.

REPRESENTATIVE KATHLEEN MCBRIDE asked Bill Opitz if he had any ideas about what the fees might be increased to. Mr. Opitz said that we will try to do a cost study but at the moment I don't think that they will be much different than what they are presently. This will depend on the mailing costs, supply costs and printing costs. We must have a hearing for any fee that is set. This would be proposed through the Administrative Rules.

REPRESENTATIVE FRANCIS KOEHNKE asked if this was the legislature's job rather than the agencies' job. I am afraid that this would be an open end deal. There is nothing to make them be efficient. It sounds like a cost-plus matter. Mr. Opitz replied that this was not their idea but it was a recommendation from the Legislative

Audit Committee. The money that is generated does not go to the Commission, it goes to the general fund. It is not earmarked revenue.

Senator Blaylock said that this was a directive from the Legislative Audit Committee not the decision of the PSC to include this portion into the bill. He mentioned that the truck fees might be a little high and maybe they should be brought down, but the truckers said that they weren't going to protest the fees. The way it is written, they could raise the fees but they could also lower the fees. It goes both ways.

REPRESENTATIVE PAUL PISTORIA asked Senator Blaylock why this bill was not split into several different bills rather than put into one large bill. Senator Blaylock said that we are suppose to modify these bills and sometimes we don't know what is going on when you have alot of small ones to deal with. This way we can look at the whole picture and decide what to do with it.

CHAIRMAN JOE BRAND asked if House Bill 186 was killed in the Senate could we take a portion of that bill and put it in this bill. Senator Blaylock replied that this could be done.

JOHN ALKE, Montana Dakota Utilities said that one thing should be pointed out regarding this review process. This was not simply a sunset review. If you recall in the 1981 session, SJR 27 directed the Legislative Auditor to take an indept study which went far beyond the normal sunset reviews. It is hard to draw a parallel between what happened with this bill and another.

REPRESENTATIVE PISTORIA said that he thought the Public Service Commission was established by the Montana State Constitution, how can you sunset this? It was not set by the State Constitution. Chairman Brand said that the Consumer Counsel is but not the Public Service Commission.

THERE BEING NO ADDITIONAL QUESTIONS CHAIRMAN BRAND CLOSED ON SENATE BILL 436.

EXECUTIVE SESSION

SENATE BILL 166 was put into the same sub-committee as Senate Bill 378 and will be considered next week.

REPRESENTATIVE CHESTER SOLBERG MOVED the meeting be ADJOURNED and this was seconded by Representative Glenn Mueller. Motion carried by unanimous voice vote.

The meeting adjourned at 11:43 a.m.

Respectfully submitted,


REPRESENTATIVE JOE BRAND, CHAIRMAN

VISITORS' REGISTER

HOUSE State Administration COMMITTEEBILL SB 436Date 3/14/83

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUP- PORT	O PO:
Opal Winebrenner	Helena	Public Service Commission	✓	
Tom Downing	Helena	Mont. RR Assn		
Tom Schneider	Helena	Public Service Comm.	✓	
Gene Phillips	KALISPELL	PACIFIC POWER & LIGHT	✓	
John Allen	Helena	Mont. Consumer Cncl	✓	
John Alke	Helena	MDU	✓	
Jim Hughes	Helena	Mountain Bell	✓	
Bob Quinn	Helena	Mont Pass Co.	✓	
Mervin E. Montgale	Leviston	Master "M" Disposal		✓
Morris Gunnickson	LIVINGSTON	UNITED TRANSPORTATION UNION	✓	
James Miller	Butte	B. B. A. C. R.R.	✓	
Ed. Smith	Boz. Mtn. way Emp.		✓	
Mike Stogin	Helena	MT Assn. of Cs	✓	with ment.
Alec Hansen	Helena	LEAGUE OF CITIES	✓	
Bill Spitz	Helena	Mont PSC	✓	
Paul S. Pistorius	Helena	State Rep.		✓
		12% (part)		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name OPAL Winebrenner Committee On State Admin
Address Helena Date 3-14-83
Representing Public Service Commission Support ✓
Bill No. SB 436 Oppose _____
Amend ✓

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

MONTANA PUBLIC SERVICE COMMISSION SUMMARY
OF THE
LEGISLATIVE AUDIT COMMITTEE BILL
SENATE BILL NO. 436
(SENATE THIRD READING COPY)

1. Re: Sunset Provision (Page 2, Beginning Line 11).

The bill amends MCA §2-3-103(1) (g) "Agencies to terminate" by removing the reference to the "Public Service Commission, Department of Public Service Regulation" and redesignating the sequence in subsection (3), and inserting a new subsection (6) that states the "Public Service Commission, Department of Public Service Regulation" will terminate on July 1, 1989.

SENATE ACTION: Approved.

COMMISSION: Support.

2. Re: Fees Charged By Commission (Page 7, Beginning Line 2).

A new section is added that will require all fees charged by the Commission to be commensurate with the costs incurred in administering the function for which the fee is being charged.

SENATE ACTION: Accepted the Commission's amendatory language "except those fees set by federal statute." Senate amended section to place \$500.00 maximum for any fee charged by the Commission.

COMMISSION: Support as amended. See attached Commission Position Statement concerning federal fees.

3. Re: Effective Date for MCA Title 69, Chapter 7 "Municipal Utilities" (Page 7, Beginning Line 7).

Chapter 7 was originally passed by the Legislature as a temporary Chapter to be terminated July 1, 1983. The termination date has been eliminated so Chapter 7 becomes permanent. (This chapter concerns the partial deregulation of municipal utility services.)

SENATE ACTION: Approved.

COMMISSION: Neutral.

4. Re: Removal of county water/sewer districts and privately owned water/sewer associations from "public utility" definition (Page 8, Beginning Line 7).

MCA §69-3-101 "Meaning of public utility" is renumbered to provide for a new subsection(2) which defines a public utility as not including county or consolidated city and county water/sewer districts as defined in MCA Title 7, Chapter 13, or privately-owned and operated water/sewer systems which do not serve the public, e.g. water associations.

SENATE ACTION: Approved.

COMMISSION: - Support. Proposed language clarifies Commission's regulatory jurisdiction over water and sewer service entities which has been the subject of litigation.

- Commission proposes an amendment to make only this Bill section effective upon passage and approval of the Act.

5. Re: Amendments to MCA §69-3-204 "Fees to be charged by Commission." (Page 8, Beginning Line 13).

Subsection(1) of MCA §69-3-204 is amended to allow the Commission discretion in determining whether to charge fees for filing annual reports, schedules and supplements, to add filing of applications to what fees can be charged for, and to eliminate (a) through (d) of the subsection that provides a specific fee schedule. Language requiring commission to charge fees for copies of orders, and other instruments is eliminated.

SENATE ACTION: Amended section to eliminate "applications" from list of documents for which fees could be charged.

COMMISSION: Support as amended.

6. Re: Amendments to MCA §69-3-304 "Temporary approval of rate increases" (Page 9, Beginning Line 10).

Amendments would allow the Commission to also temporarily approve rate decreases pending a rate application hearing or the Commission's final decision on a rate application.

If the Commission's final decision is to disapprove the temporary rate decrease, the Commission has the discretion to order all consumers to pay a surcharge for the amount that was not collected retroactive to the date of the temporary approval.

The Commission is also granted the discretion to order that interest, as determined by the Commission, be assessed on the surcharge.

Also provides that the Commission's decision to approve or deny a temporary rate decrease is an intermediate agency action, and a party may seek judicial review of that action under the Montana Administrative Procedure Act.

SENATE ACTION: Amended section to make the assessment of interest on surcharges or rebates mandatory, and to require the Commission, when granting a temporary rate decrease, to use the same standards as when it grants a temporary rate increase.

COMMISSION: Support, but proposes its own amendment concerning standards to be used in granting a temporary rate decrease.

7. Re: Clarifying Amendments to Title 69, Chapter 7 "Municipal Utilities" (Page 10, Beginning Line 3).

(A) Amends MCA §69-7-101 "Municipal-utilities regulation by municipality-limitation," to clarify that the phrase "annual

revenues" for purposes of Chapter 7, means any consecutive 12 month period. (Page 10, Beginning Line 17).

SENATE ACTION: Approved.

COMMISSION: Support if Commission's regulatory jurisdiction over municipal utilities is retained.

(B)Amends MCA §69-7-102 "Rate increases over maximum" to provide that if the Commission issues a final order concerning a municipality's rates, the municipality is prevented from increasing its rates for a period of 12 months following the Commission's order. A municipality may increase rates during such a 12 month period, however, if the increases are required to finance the local government's share for mandated federal or state capital improvements. (Page 11, Beginning Line 4).

SENATE ACTION: Approved.

COMMISSION: Support if Commission's regulatory jurisdiction over municipal utilities is retained.

(C)Removes requirement in MCA §69-7-111 "Municipal Rate Hearing" that a municipality must mail notice of rate hearing by sending the notice with the monthly bill for utility services; municipality still required to mail notices no more than 30 days prior to the rate hearing. (Page 12, Beginning Line 2).

Provides that notice of rate hearing contain an estimate of customer's average bill thereby removing requirement that estimate must be of a "monthly" bill. (Page 12, Beginning Line 5).

SENATE ACTION: Approved.

COMMISSION: Neutral.

8. Amendments to subsection(3) of MCA §69-12-311,312,313
Re: Motor carrier certificate Application filing fee.
(69-12-311: Page 12, Beginning Line 17; 69-12-312: Page
14, Beginning Line 4; and 69-12-313: Page 16, Beginning
line 23.)

Subsection (3) in MCA §69-12-311, §69-12-312, and §69-12-313 is amended to allow the Commission to set filing fees for Class A, B, and C motor carrier certificate applications and removes specific language re: amount of fee and requirement that filing fee be determined by number of counties for which certificate is requested. These amendments will be consistent with proposed language of MCA §69-12-423 "Fees to be charged by Commission."

SENATE ACTION: Approved.

COMMISSION: Support.

9. Amendment to MCA §69-12-313(1) "Class C motor carrier
certificate. (Page 15, Beginning Line 14).

Subsection (1) in MCA §69-12-313 is amended to specifically refer to MCA §69-12-324 "Special provisions when federal or state contract involved.", rather than having the contract exception language of MCA §69-12-324 contained in Subsection (1).

SENATE ACTION: Approved.

COMMISSION: Support.

10. Amendment to MCA §69-12-321(1) "Hearing on Application for motor carrier certificate." (Page 17, Beginning Line 12).

Subsection(1) is amended to simply refer to MCA §69-12-324 concerning Class C carriers who have contracts with a government department or agency, rather than having the contract exception language of MCA §69-12-324 contained in the Subsection (1).

SENATE ACTION: Approved.

COMMISSION: Support.

11. Amendments to MCA §69-12-324 "Special provisions when federal or state contract involved." (Page 19, Beginning Line 3)..

Subsection(1) is revised to more clearly define a transportation movement for the purposes of this section: If a federal government contract is involved, the transportation movement must involve for hire movement of people or commodities. If a state or local government contract is involved, the transportation movement must involve the transportation of solid waste.

Subsection(1)(2) and (3) are amended to include "local government contracts."

SENATE ACTION: Removed proposed amendatory language that included "local governments". Amended section to reinsert statutory language, that was inadvertently crossed out in bill, to provide that presentation of a federal or state government contract will establish public convenience and necessity for the purposes of Section 69-12-324, MCA.

COMMISSION: The Commission proposes an amendment to include "local governments". Please see the attached Commission Position Statement.

12. Amendments to MCA §69-12-406 "Restriction on transportation of certain waste." (Page 21, Beginning Line 4).

New language is added to refer to the exception in MCA §69-12-324 that would allow Class A, B, or C carriers to transport solid waste under a government contract.

SENATE ACTION: Approved.

COMMISSION: Support.

13. Amendments to MCA §69-12-421 "Annual fee for motor carriers." (Page 21, Beginning Line 11).

Subsection(1) is amended to change the dates by which motor carriers must pay their annual fees to the Commission from "on or between January 1 and January 15" to "on or between October 1 and the immediately following January 31."

Subsection (1) is also amended to remove language requiring the annual fee to be \$5.00, and adding new language to allow the Commission to set the annual fee.

SENATE ACTION: Approved.

COMMISSION: Support. Proposed language will bring filing dates into conformity with federal statutes. Language to allow Commission to set the annual fee is consistent with proposed language of MCA §69-12-423 "Fees to be charged by Commission."

14. Amendments to MCA §69-12-423 "Fees to be charged by Commission." (Page 22, Beginning Line 10).

Subsection(1). is amended to grant the Commission discretion in determining whether to charge fees for sales and leases of motor carrier certificates, public convenience and necessity applications, schedules and supplements. Language requiring the Commission to charge fees for copies of orders and other documents/instruments and (a) through (e) of the subsection that provided a fee schedule, are eliminated.

SENATE ACTION: Approved.

COMMISSION: Support.

15. Amendments to MCA §69-12-501 "Rate schedules to be maintained." (Page 23, Beginning Line 10).

Adds Class D motor carriers on the assumption that the Legislature will adopt other legislation requiring Class D carriers to be rate regulated by the Commission. Language is added to clarify that the service rates charged by Class D carriers on January 1, 1983, will be grandfathered and serve as the lawful rates until changed by the rate procedures allowed in Chapter 12.

SENATE ACTION: Approved amendment to remove Section 69-12-501, MCA from the bill, thus retaining the Section as it is currently.

COMMISSION: Neutral.

16. Amendments to MCA §69-12-502 "Prohibition on deviation from rate schedules." (Page 24, Beginning Line 10).

Language to include Class D carriers is added for consistency with MCA §69-12-501 on the assumption that these carriers will be rate regulated.

SENATE ACTION: Approved amendment to remove Section 69-12-502, MCA from the bill, thus retaining the Section as it is currently.

COMMISSION: Neutral.

17. Amendment to MCA §69-14-115 "Investigation, enforcement and report concerning railroad safety laws." (Page 25, Beginning Line 8).

Commission enforcement of railroad safety laws is made permissive by the amendment to strike "shall" and insert "may".

SENATE ACTION: Approved Commission's amendment to retain the current mandatory language of Section 69-14-115, MCA, i.e. "shall."

COMMISSION: Support as amended by Senate, and proposes amendment to strike the bill section, see attached Commission Position Statement.

18. Amendment to MCA §69-14-116 "General protection of health and safety on railroads." (Page 26, Beginning Line 3).

Commission regulation of health and safety standards on railroads is made permissive by subsection(1), with the amendment to strike "shall" and insert "may".

SENATE ACTION: Approved Commission's amendment to retain the current mandatory language of Section 69-14-116, MCA, i.e. "shall."

COMMISSION: Support as amended by Senate, and proposes amendment to strike the bill section. See attached Commission Position Statement.

19. Amendments to MCA §69-14-202 "Duty to furnish shipping and passenger facilities." (Page 26, Beginning Line 21).

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Subsection(1) and (2) are amended to provide that if a railroad maintains and staffs facilities for the shipment and delivery of freight and/or accomodation of passengers, the railroad cannot discontinue or remove any agency, i.e. the station agent, or any station facility without a public hearing before the Commission.

Language is deleted that required railroads to maintain staff and facilities when they were located in cities or towns with populations (according to the most recent U.S. Census) of not less than 1,000.

SENATE ACTION: Senate removed Section 69-14-202, MCA from the bill, thereby retaining the Section with its current language.

COMMISSION: Neutral. The Commission has enforced this Section and refused to allow a railroad to close any station facilities when the station was the last one in a county or was located in a city or town with a population not less than 1,000.

The Burlington Northern Railroad Company has sued the Commission in federal district court concerning the constitutionality of the Section.

Since the Section is one that the Commission must enforce, the Commission has argued in the suit that the Section is constitutional. There has been no decision in the case as of March 14, 1983.

Commission will abide by the Legislature's policy determination on whether or not to remove the population and last station in the county requirements.

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Thomas Schneider, Chairman
John Driscoll
Howard Ellis
Clyde Jarvis
Danny Oberg

EXPLANATION OF AMENDMENT TO SENATE BILL NO. 436

Page 7, Beginning Line 5 "except those fees set by federal statute".

Federal law presently provides for the maximum fees that states can assess motor carriers for registration of interstate authorities and purchase of Vehicle Identification Stamps. Montana and the majority of other states assess the maximum fee provided by law. The Vehicle Identification Stamp fee applies to all vehicles used by regulated carriers, whether those carriers are based in Montana or not. To date, the Commission has sold more than 155,000 1983 Vehicle Identification Stamps at \$5.00 per stamp.

Approximately 90 to 95 percent of the carriers ordering these stamps are based outside of Montana.

Thomas Schneider, Chairman
John Driscoll
Howard Ellis
Clyde Jarvis
Danny Oberg

SENATE BILL 436 (Senate Third Reading Bill Copy)

RE: Section 69-12-324, MCA "Special Provisions When Federal
or State Contract Involved."

PAGE 19 BEGINNING LINE 3

MONTANA PUBLIC SERVICE COMMISSION POSITION STATEMENT

This section of Senate Bill 436 proposes to allow local governments the same contracting rights as now possessed by the federal and state governments. Under existing statute, any carrier who has a contract for transporting any commodity for the United States government or a contract for the transportation for solid waste with any state agency can present that contract to the Public Service Commission and receive a certificate of public convenience and necessity for the duration of the contract. Under this bill local governments would also be allowed to issue contracts for the transportation of solid waste, and the PSC could then issue a certificate of public convenience and necessity based on that contract.

The Public Service Commission supports this legislation for the following reasons:

1. Review by two governmental bodies (local governments and the Public Service Commission) of a carrier's ability to transport solid waste is both unnecessary and costly to the State of Montana. Once a local government entity (city, county, or district) has advertised for bids based upon its specifications and has awarded a contract for the transportation movement of solid waste, further review by the Public Service Commission is not only unnecessary, but may result in an overturning of the bid process based upon the present statutes, therefore resulting in a higher cost to the consumer in the area.
2. Local governments are in a much better position to monitor the service provided by the contractors and to take corrective action if they find it is needed for the protection of the health and welfare of their constituents.
3. It should be noted that any certificate of public convenience and necessity issued under this legislation will expire at the end of the contract period. Present solid waste carriers are protected under Section 7-13-4107, MCA, which states that existing carriers must be given five years notice or paid fair market value for their equipment if the community elects to provide exclusive garbage or solid waste service.

Consumer Complaints (406) 449-4672

"AN EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER"

4. It should be pointed out that the Public Service Commission would still maintain, under this procedure, jurisdiction over insurance and vehicle safety and the PSC would assist local governments in all vehicle safety related matters.

It is the position of the Montana Public Service Commission that once a local government has advertised, accepted bids and made a decision on who to use to transport solid waste in its area, through the awarding of a contract, a presentation of that contract to the Commission should be enough evidence for the Commission to grant a certificate without further review.

The Montana Public Service Commission supports this section of Senate Bill 436 as a means of reducing the bureaucracy and review by two governmental agencies of a bonafide contract between a local government and a carrier who wishes to transport solid waste, and to provide the local government the ability to decide which carriers would best serve its constituents.

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
Telephone: (406) 449-3007 or 449-3008

Thomas Schneider, Chairman
John Driscoll
Howard Ellis
Clyde Jarvis
Danny Oberg

SENATE BILL 436 (Senate Third Reading Bill Copy)

RE: Section 69-14-115, MCA, "Investigation, enforcement, and report concerning railroad safety laws", Page 25, Beginning Line 8.

Section 69-14-116, MCA, "General protection of health and safety on railroad", Page 26, Beginning Line 3.

MONTANA PUBLIC SERVICE COMMISSION POSITION STATEMENT RE: RAIL SAFETY

The Montana Public Service Commission supports Senate Bill 436, as amended by the Senate, which retains the mandatory enforcement of railroad safety laws in Montana rather than making the enforcement permissive. The Commission feels that the State of Montana needs to have its own rail inspector. Some reasons for this include:

1. There are safety and sanitary conditions set out by Montana statutes that Federal inspectors have no jurisdiction over. (i.e.: conditions inside cabooses.)
2. The State of Montana has priorities for track inspections which may differ from those of the Federal Government. At the present time, the State has no voice in what lines should be inspected or how often the inspections should be made. (i.e.: The State of Montana may have a priority of maintaining conditions on branch lines to see that adequate service is provided.)
3. The Commission has in the past legislative sessions been on record requesting a rail inspector position from this legislature, and is again this year requesting a position through our budget process.

It is the Commission's opinion that rail safety is important to the State of Montana and that all efforts to institute a rail inspection program should be taken. The Commission urges your support of the Senate's amendatory language in these two statutes, and to support the Commission in its efforts to obtain funding for a State Rail Inspector.

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Thomas Schneider, Chairman
John Driscoll
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Danny Oberg

PROPOSED AMENDMENT TO SENATE BILL NO. 436
(SENATE THIRD READING COPY)

Re: Effective date for Bill Section 5 concerning
Section 69-3-101, MCA.

Explanation of Amendment :

The Commission supports making the Bill section that removes county water and sewer districts and privately owned and operated water associations from Commission regulatory jurisdiction effective immediately upon passage and approval of SB No. 436.

Page 27, Line 24

Following "1983"

Strike: "."

Insert: ", except Section 5 is effective upon passage and approval of this Act".

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
Telephone: (406) 449-3007 or 449-3008

Thomas Schneider, Chairman
John Driscoll
Howard Ellis
Clyde Jarvis
Danny Oberg

PROPOSED AMENDMENT TO SENATE BILL NO. 436

(SENATE THIRD READING COPY)

RE: Amending Section 7 of SB No. 436 concerning Section 69-3-304, MCA.

1. Page 9, Line 24.

Following: "be"

Strike: "BASED ON IDENTICAL STANDARDS"

Insert: "based upon consistent standards appropriate
for the nature of the case pending"

WITNESS STATEMENT

Name MORRIS GUNICKSON Committee On ST. ADMIN
Address LIVINGSTON, MT. Date 3/14/83
Representing UNITED TRANSPORTATION UNION Support X
Bill No. SB 436 Oppose
Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. WE SUPPORT THIS BILL AS AMENDED IN THE SENATE AS
TO THE RAIL PORTION, AND THE ST. TRACK INSPECTOR
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Jim Mular Committee On ST. NOIM
Address ROUTE 111 Date 3/14/83
Representing B.R.A.C. Support X
Bill No. SB 436 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. WE SUPPORT THIS BILL - PERTAINING TO THE RAILROAD SECTION - ESPECIALLY THE RAIL STATION AGENCY PORTION
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Carl Knutson Committee On _____
Address 220 So. Pearson Date March 14, 1983
Representing Brotherhood of Mtn. of way Emp. Support we support
Bill No. Senate Bill 436 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. We support the railroad portion of bill as presented by the Senate.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

can not be an elected official.

REPRESENTATIVE CHESTER SOLBERG said that there are a number of committee leaders who are not politically involved and they make very good committee members. It is true that both parties are not going to agree entirely on all issues.

REPRESENTATIVE BILL HAND questioned why the Supreme Court had not done this before, as far as reapportionment was concerned.

REPRESENTATIVE PAUL PISTORIA said that he felt that we needed some clarification on this bill. He referred to the part of the bill that would deal with the selection of the four members.

ANN BRODSKY explained about the concern which Representative McBride had voiced. She mentioned that maybe there should be some kind of "out" but that it would not allow the party to benefit on this. This could just become a problem rather than help.

CHAIRMAN JOE BRAND asked how many states have this kind of a proposal and which one seems to be working the best? Ann Brodsky replied that she did not know the answer to this. There are twenty some states that have a commission to do reapportionment. The ones that are outside of the realm of the legislature at least.

REPRESENTATIVE CHESTER SOLBERG MOVED that the committee accept the proposed amendments before the committee on this bill. Representative Glenn Mueller seconded the motion. The question being called, the motion carried with Representative Brand and Hand voting nay.

REPRESENTATIVE JOHN PHILLIPS MOVED Senate Bill 286 AS AMENDED BE CONCURRED IN, this was seconded by Representative Francis Koehnke. The question being called, the motion carried with Representatives McBride, Driscoll, Hand, and Brand voting nay.

Senate Bill 286 was reported out of committee this date AS AMENDED BE CONCURRED IN, Representative Chester Solberg will carry the bill on the House floor.

SENATE BILL 436

REPRESENTATIVE JERRY DRISCOLL explained the proposed amendments by the sub-committee. He explained that the garbage haulers portion of the bill was brought back to the full committee because they had questions on it. He then covered the amendments which are mostly housekeeping. It was mentioned that the amendment on page 9, line 24 was agreed to by both the PSC and the utilities.

The changes on page 25, line 6 through 25 is stricken because this is already in the bill. The same thing applies to the language on page 26 lines 1 through 20.

REPRESENTATIVE PAUL PISTORIA asked about this being approved by the PSC. Representative Driscoll replied that this was alright with them.

REPRESENTATIVE JERRY DRISCOLL further explained that on page 27 line 23, they split the effective date. The reason for this was because of the rural water companies and the PSC does not want to regulate them and the court said that they had to, so we put the effective date in to allow them to review their own businesses.

REPRESENTATIVE JERRY DRISCOLL MOVED that the committee accept the amendments reviewed so far, this was seconded by Representative Joe Hammond. The question being called, the motion carried unanimously.

REPRESENTATIVE JERRY DRISCOLL then explained the amendments on the second page. This has to do with local governments. He explained that the Senate took this out on the floor. We thought that we should bring this back to the full committee to discuss.

REPRESENTATIVE GLENN MUELLER asked if there are any ideas as to the rationale regarding why the Senate took this out. Representative Driscoll that in towns where there are additions in the area and the city has control over the contractor and they (the city) decides to change the contractor, maybe this could have an effect in densely populated areas. There are arguments to putting the local governments back into the bill. If someone bid for a contract and they did not have a permit they could not get the bid.

REPRESENTATIVE PAUL PISTORIA asked if the PSC had taken a side on this issue and did the garbage haulers take a side. Representative Driscoll explained that the PSC proposed these amendments and the counties support them and the garbage haulers are in opposition of it.

Representative Pistoria asked Representative Driscoll what the sub-committee reasons were for going with this amendment. Mr. Ellis from the PSC replied that they feel the cities and counties are just as responsible as we are and they can help the people as well as the PSC can.

REPRESENTATIVE GLENN MUELLER replied that he is hearing the PSC saying that they are in favor of the local people running things rather than them doing it all. Mr. Romine said that with respect to these questions this bill would effect the big out of state haulers. They do not have to go before the PSC, they only need to get their approval through the local government. He then explained what could happen to the local man if they get under bid because of the out of state people. He said that there is definately a need for the PSC regulation because without it the little man could get run out of business. This amendment was taken out in the Senate for just that reason.

The PSC granted a permit and it was based on the completion of the contract. He said that anyone can go to the PSC and get a permit if the need is there. This was already fought in the Senate, it will bring in out of state people to bid contracts in the rural areas and it should not be granted.

REPRESENTATIVE PAUL PISTORIA asked Mr. Romine if he favored the way that things are handled now. Mr. Romine replied, yes, we feel that it protects the local haulers.

REPRESENTATIVE GLENN MUELLER replied by saying that he would like to hear both sides. Mr. Opitz said that they were aware of the problems that could occur. They feel that the outside people coming in would not be a problem. In the past six years they have had the opportunity to move into the state more than they would be able to with this proposed legislation. He reminded the committee to take a look at what the Legislative Auditor's had said about this portion of the bill.

REPRESENTATIVE DUANE COMPTON asked Mike Stephen to respond to this. Mr. Stephen said that whether you like it or not the cities and counties are involved now. It is a fact that we are looking at the lowest bid. But it also has to be someone that is a responsible bidder. If someone else has a Class D certificate you can bump them. We have a mechanism to make this work but we cannot follow through on it. It is probably the neighbor next door that under bids you rather than the people from out of state. It is presently unworkable.

REPRESENTATIVE GLENN MUELLER asked if the person in the Libby area who presently has the bid would be protected at all. Mr. Romine said that assuming that the bid process was carried through, yes. They do compete with each other and in most areas there is competition.

REPRESENTATIVE JERRY DRISCOLL asked which of the cities and counties came in and testified for this legislation.

REPRESENTATIVE BILL HAND replied that the PSC does not want the garbage haulers under their jurisdiction. The counties want to extend the process that the law now has. The problem is the Class D certificate and that is what we want.

CHAIRMAN JOE BRAND said that the counties are going with the PSC and the garbage people want the PSC not the counties to do the regulating. Mr. Stephens stated that they would still have to go through the bid process in that the carrier is going to the PSC and they will review it and then that responsible bidder is given a Class D certificate for the length of the contract.

MR. WAYNE BUTTS, PSC, said that under the present law if the private company wants to compete they have to come to the PSC

and prove that there is a need. Under these amendments the need is granted by the local government. We still determine the letting ability. We give them a certificate for the length of the contract. They still have to meet all our rules and regulations for satisfaction and then the local government which services his area. They have the authority to pull the contract if they are not performing properly.

REPRESENTATIVE JERRY DRISCOLL said, if we put these amendments on the bill, it will be a battle and it will probably die any way. The Senate is not going to accept them. I recommend a rejection of the amendment.

REPRESENTATIVE GLENN MUELLER said that he thought that they should look at the merits of what they have had and decide on those issues what would be best for the citizens of Montana. Mr. Stephens replied to the concern about the local carrier and he said that it could be changed now as the present law exists.

REPRESENTATIVE WALTER SALES MOVED to accept the amendments to the garbage haulers poriton of the bill, this was seconded by Representative Glenn Mueller. The question being called, the motion carried with a vote of 12 yes and 6 no's.

CHAIRMAN JOE BRAND asked how many FTE's would be relieved if this bill passed. Mr. Butts replied, none since it is part of the other bureau. The only change would be that the commission will not be going out and holding hearings. Mr. Opitz also said that it will eleviate alot of court suits that they have pending.

Chairman Brand said that we in state government are always saying that we want to give more authority to the local governments, this is our chance.

MS. LOIS MENZIES read the amendments from Representative John Ryan and explained that the language should probably be cleaned up a little. She informed the committee that the sub-committee had rejected this amendment. This would be inserting section 24 as drafted.

REPRESENTATIVE JERRY DRISCOLL explained that they had considered these in the sub-committee and it was decided to reject them.

CHAIRMAN JOE BRAND asked what the committee felt about putting this section 24 into the bill. Representative Ryan said that he would withdraw the amendment since this was already covered in the law.

REPRESENTATIVE WALTER SALES MOVED that Senate Bill 436 AS AMENDED BE CONCURRED IN, this was seconded by Representative Bill Hand. The question being called, the motion carried with Representative

Paul Pistoria voted no.

Senate Bill 436 was voted out of the committee this date AS AMENDED BE CONCURRED IN and it will be carried on the House floor by Representative Jerry Driscoll.

SENATE BILL 378

MS. MENZIES explained the proposed amendment that the sub-committee decided on. This is basically a housekeeping change.

REPRESENTATIVE BILL HAND MOVED to accept the proposed amendment changing the date in the title and on page 5 to July 1, 1983. This was seconded by Representative Joe Hammond. The question being called, the motion carried.

REPRESENTATIVE BRENT BLISS mentioned an amendment that he had presented to the sub-committee. Representative Driscoll talked about the reason that this would not work. He stated that he was not in favor of the proposed amendment by Representative Bliss.

CHAIRMAN JOE BRAND said that if we want to know what other systems are paying more by the employee rather than the employer we should check with the PERS Division.

REPRESENTATIVE BRENT BLISS MOVED to accept this amendment and it was not seconded so it failed for lack of interest.

REPRESENTATIVE GLENN MUELLER asked if the CAP was discussed at the sub-committee meeting. Representative Driscoll replied, yes, and it will not work.

There was some discussion about the retirement and those that will be replaced and those that would not be. This would not help the unemployment at all because they would only retire if they had something else to do.

REPRESENTATIVE PAUL PISTORIA asked Senator Berg about a case that had been brought to his attention regarding a teacher who has been teaching for 28 years, she is 52 years old but 5 years of that time she only taught half days and it does not count towards her retirement. Senator Berg said he couldn't answer that accurately. If you teach half time you contribute the same amount as if you were a full time teacher. The half time is based on half of the retirement system costs.

REPRESENTATIVE BILL HAND MOVED to accept the sub-committee report on the amendments and this was seconded by Representative Clyde Smith.

REPRESENTATIVE PAUL PISTORIA mentioned that he would probably vote for this bill but he did have some questions.

STANDING COMMITTEE REPORT

1 of 2

March 23

19 83

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE

Bill No. 436

third reading copy (blue)
~~first~~ ~~white~~ color

"AN ACT REESTABLISHING THE PUBLIC SERVICE COMMISSION UNDER EXISTING STATUTORY AUTHORITY AND RULES; REVISING PUBLIC SERVICE COMMISSION AUTHORITY; PROVIDING FOR FEES COMMENSURATE WITH COSTS; MAKING TEMPORARY MUNICIPAL REGULATORY AUTHORITY OVER UTILITIES PERMANENT; EXEMPTING PRIVATELY OWNED AND COUNTY WATER AND SEWER SYSTEMS FROM PUBLIC SERVICE COMMISSION REGULATION; AUTHORIZING TEMPORARY UTILITY RATE DECREASES; CLARIFYING TIME LIMITS ON MUNICIPAL RATE INCREASES; MODIFYING MUNICIPAL RATE HEARING NOTICE REQUIREMENTS; EXTENDING SPECIAL PROVISIONS RELATED TO WASTE DISPOSAL TO LOCAL GOVERNMENTS; ESTABLISHING RATE-MAKING AUTHORITY OVER CLASS-2 MOTOR CARRIERS; MAKING RAILROAD SAFETY FUNCTIONS PERMISSIVE RATHER THAN MANDATORY; ~~DELETING THE REQUIREMENT THAT RAILROADS SERVE ALL COUNTY SEATS AND CITIES OVER 17,000;~~ AMENDING SECTION 9, CHAPTER 607, LAWS OF 1981; AMENDING SECTIONS 2-8-103, 69-3-101, 69-3-204, 69-3-304, 69-7-101, 69-7-102, 69-7-111, 69-12-311 THROUGH 69-12-313, 69-12-321, 69-12-324, 69-12-406, 69-12-421, 69-12-423, 69-12-531, ~~69-12-592,~~ 69-14-115, AND 69-14-116, AND 69-14-262, MCA; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That

Bill No.

Respectfully report as follows: TJAS SENATE Bill No. 436

1. Title, lines 16 and 17.

Strike: "MAKING" on line 16 through";" on line 17

2. Title, line 23.

Following: "69-12-421,"

Insert: "AND"

Strike: "69-14-115, AND"

3. Title, line 24.

Strike: "69-14-116,"

Following: "PROVIDING"

Strike: "AN"

4. Title, line 25.

Strike: "DATE"

DO ASSERT: "DATES"

Continued

March 23,

19

33

5. Page 9, line 24.

Strike: "ON IDENTICAL"

Insert: "upon consistent"

Following: "STANDARDS"

Insert: "appropriate for the nature of the case pending"

6. Page 19, line 21.

Following: "ECCAB"

Insert: "or local"

7. Page 20, line 3.

Following: "counties"

Insert: "or a local government, including but not limited to cities and counties"

8. Page 20, line 11.

Following: "~~local~~"

Insert: "or local"

9. Page 20, line 14.

Following: "~~local~~"

Insert: "or local"

10. Page 20, line 20.

Following: "~~local~~"

Insert: "or local"

11. Page 20, line 22.

Following: "~~local~~"

Insert: "or local"

12. Page 20, line 25.

Following: "~~local~~"

Insert: "or local"

13. Page 25, line 6 through line 20 on page 26.

Strike: sections 19 and 20 in their entirety

Renumber: subsequent sections

14. Page 27, line 23.

Strike: "date"

Insert: "dates"

Following: "date."

Insert: "(1)"

Following: "act"

Insert: "except for section 5"

15. Page 27.

Following: line 24

Insert: "(2) Section 5 is effective on passage and approval."

AND AS AMENDED BE CONCURRED IN

...REP. JOE BRAND,.....

Chairman.

SUBCOMMITTEE AMENDMENTS TO SENATE BILL 436:

1. Title, lines 16 and 17.

Strike: "MAKING" on line 16 through ";" on line 17

2. Title, line 23.

Following: "69-12-421,"

Insert: "AND"

Strike: "69-14-115, AND"

3. Title, line 24.

Strike: "69-14-116,"

Following: "PROVIDING"

Strike: "AN"

4. Title, line 25.

Strike: "DATE"

Insert: "DATES"

5. Page 9, line 24.

Strike: "ON IDENTICAL"

Insert: "upon consistent"

Following: "STANDARDS"

Insert: "appropriate for the nature of the case pending"

6. Page 25, lines 6 through 25.

Strike: section 19 in its entirety

Renumber: subsequent sections

7. Page 26, lines 1 through 20.

Strike: section 20 in its entirety

Renumber: subsequent sections

8. Page 27, line 23.

Strike: "date"

Insert: "dates"

Following: "date."

Insert: "(1)"

Following: "act"

Insert: "except for section 5"

9. Page 27.

Following: line 24

Insert: "(2) Section 5 is effective on passage and approval."

PROPOSED AMENDMENTS TO SENATE BILL 436:

Blaylock Amendments: Supported by: Public Service Commission
Mike Stephen, MACO
Opposed by: Bill Romine, Waste Collectors
Sandy Mentyalce, Lewistown

1. Page 19, line 21.

Following: "~~local~~"

Insert: "or local"

2. Page 20, line 8.

Following: "~~counties~~"

Insert: "or a local government including but not limited to
cities and counties"

3. Page 20, line 11.

Following: "~~local~~"

Insert: "or local"

4. Page 20, line 14.

Following: "~~local~~"

Insert: "or local"

5. Page 20, line 20.

Following: "~~local~~"

Insert: "or local"

6. Page 20, line 22.

Following: "~~local~~"

Insert: "or local"

7. Page 20, line 25.

Following: "~~local~~"

Insert: "or local"

48th

LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB 432	2-16-83	2-18-83	2-18-83	2-18-83					
SB 436	2-17-83	2-19-83	2-19-83			2-19-83			
SB 439	2-16-83		2-16-83	SENT TO PUBLIC HEALTH					
SB 453	2-16-83	2-17-83	2-17-83	2-17-83					
SB 456	2-16-83	2-18-83	2-18-83			2-18-83			
SB 460	2-18-83	2-19-83	2-19-83	TABLED					

Use a separate sheet for Senate, House Bills and Resolutions

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 19, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on February 19, 1983, at 12:25 p.m., in Room 405, State Capitol.

ROLL CALL: All members were present with the exception of Senators Boylan and Severson who were excused.

CONSIDERATION OF SENATE BILL 436: An act reestablishing the Public Service Commission under existing statutory authority and rules; revising Public Service Commission authority; providing for fees commensurate with costs; making temporary municipal regulatory authority over utilities permanent; exempting privately owned and county water and sewer systems from Public Service Commission regulation; authorizing temporary utility rate decreases; clarifying time limits on municipal rate increases; modifying municipal rate hearing notice requirements; extending special provisions relating to waste disposal to local governments; establishing ratemaking authority over Class D motor carriers; making railroad safety functions permissive rather than mandatory; and deleting the requirement that railroads serve all county seats and cities over 1,000.

Senator Chet Blaylock went through the highlights of the bill. He gave the committee an amendment which was given to him by the Public Service Commission. (Exhibit No. 1)

PROPOSERS TO SENATE BILL 436: Senator Matt Himsel stated he was the Chairman of the Audit Committee on the sunset review. The Public Service Commission and other utilities, if you read the sunset review are working well together. They were told by a number of utilities that the spirit of cooperation became much better after they were put under the sunset. There were no conflicts. This is a complex and difficult issue when you get into rate fixing and rate making. They found they were in unison in the practices found elsewhere. However, the length of time when the applications came in and were heard was something like 20 months. It is our recommendation that in order to improve this time problem they have we are suggesting additional financing to provide capability to audit industry and motor carriers more than they have, improve data processing, and on-going review of carrier people.

Bill Romine, Solid Waste Contractors Association, stated it is obvious that the Public Service Commission needs to be reactivated. He handed the Committee amendments which he is proposing. (Exhibit No. 2)

Tom Schneider, Public Service Commission, stated the staff had prepared an excellent summary of the bill. He introduced their attorney, Opal Weinbrenner.

Opal Weinbrenner stated the Commission had one proposed amendment on page 7. (Exhibit No. 3) She also had Statements of Support, Statements of Opposition by the Montana Public Service Commission and a Summary of the Legislative Audit Committee Bill. (Exhibits 4, 5, & 6).

These exhibits are attached to the minutes.

Bill Brasher, Burlington Northern Railroad, stated they support this bill as prepared and as written by the Legislative Audit Committee. They support the language changes in the bill regarding permissive rather than mandatory safety inspections.

Ben Havdahl, Montana Motor Carriers Association, stated they support this legislation especially the section that says "the payment of fees charged by the Commission must be commensurate with the costs incurred in administering the function for which the fee is charged."

J. W. Hyre, Mountain Bell, stated they support this bill. He had some proposed amendments which he explained to the committee regarding temporary increases and decreases. (Exhibit No. 7)

OPPONENTS TO SENATE BILL 436: Representative Paul Pistoria stated he is only opposed to the regulation of the water and sewer allowing the power to raise it 12%. He fought this in the 1981 session. The city of Helena was granted a raise and then asked for another raise. They also tried the same thing in the city of Great Falls.

John Alke, MDU, stated they oppose the bill as written because it has unconstitutional provisions. He gave the committee proposed amendments to the bill. (Exhibit No. 8)

James Mular, Railway Clerks, stated the bill should be restored to the language of the present law. His written testimony is attached to the minutes. (Exhibit No. 9)

Morris Gullickson, United Transportation Union, stated they oppose the bill. If this bill passes we would like to see an amendment, page 25, line 22, returned to "shall have full authority" instead of "may". We want the Public Service Commission to have full authority in enforcing the safety and health rules and not a "may enforce" situation. We work under these rules and want them enforced.

Dennis Lopach, Northwestern Telephone Systems, Inc., stated it is my position that if the Commission were to be taken from a general fund agency and based strictly on a user fund system the appropriate means would be a revenue tax which is now collected in order to fund the Consumer Counsel's office. He does not know how the Commission will determine in advance what the cost of determining a rate application might be. There might be some policy for removing the burden on the general fund. This would be an unrealistic approach to the problem. It seems this is asking the Commission to do something that is very difficult.

There were no further proponents nor opponents.

QUESTIONS FROM THE COMMITTEE: Senator Regan asked were these amendments considered by you when you were having the bill drafted? Senator Blaylock stated as far as the unconstitutionality, no. The amendment that I presented as far as cleaning up the language we do have that

that amendment in there. The staff attorneys at the Public Service Commission feel if we can put the proposed language in it would be cleaner language.

Senator Fuller asked did you review this legislation? Mr. Paine, Consumer Counsel, stated he is in support of the continued assistance of the Commission.

Senator Lee asked all the new language where we strike the fees... what will the net affect be will the fees go down or up? Mr. Schneider stated there will be very little change. Some of the key fees are set by Federal legislation.

Senator Dover asked would you feel too bad if we stripped this down and put in what you amended out? You have put into this bill many issues that have been debated and battled and now you sneak it in this bill. We have a few minutes to work on things that the Legislature has battled for hours. If you want this stuff in put it in on another bill. Senator Blaylock stated we are doing what we have been told by the Legislature. The Boards, Bureaus and Commissions were to be sunsetted. We were to look them over and recommend this to the Legislature in this bill. We are not trying to sneak anything. This bill came up just a few days ago. We should go ahead and pass this over to the House as is and then hopefully the House will have more time to look at this, but we should not strip this out as it is the recommendation of the Legislative Audit Committee.

Senator Dover asked what requires you to bring all this in one bill? You could have brought these issues up in several bills. Senator Blaylock stated you would not be following the sunset audit.

Senator Himsl stated this is not what the sunset review is all about. The review is to reexamine independently and thoroughly each of these agencies and reestablish them with improvements.

Senator Dover asked could you put them in separate bills? Senator Himsl asked why would you want to do that? There is no reason. You can amend it. That is your responsibility. It makes more sense to put some of these bills together instead of doing what we are doing now.

Chairman Kolstad stated I think because of the severe time constraints we are under here I am going to appoint a subcommittee and meet after the session. He appointed Senators Lee, Gage and Christiaens.

Additional exhibits are attached. There was not enough time to hear all proponents and opponents of this bill. (Exhibits 10 through 15) These are attached to the minutes.

The hearing was closed on Senate Bill 436.

CONSIDERATION OF SENATE BILL 460: An act creating the Montana Economic Development Corporation; specifying the powers and functions of the corporation; providing for funding of the corporation; and providing

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

DATE 2-19-83

NAME	PRESENT	ABSENT	EXCUSED
PAUL F. BOYLAN			✓
B. F. CHRIS CHRISTIAENS	✓		
HAROLD L. DOVER	✓		
DAVID FULLER	✓		
DELWYN GAGE	✓		
PAT M. GOODOVER			✓
GARY P. LEE, VICE CHAIRMAN	✓		
PAT REGAN	✓		
PAT M. SEVERSON			✓
ALLEN C. KOLSTAD, CHAIRMAN	✓		

SUBMITTED BY: Bill Romine
February 19, 1983

EXHIBIT NO. 2
AMENDMENTS TO SENATE BILL NO. 436:

Submitted by Solid Waste Contractors Association

Amend Senate Bill No. 436 as follows:

1. Page 19, line 24.

Following: "thereof"

Strike: "or a local government, including but not limited
to cities and counties."

2. Page 23, line 6.

Following: "Class A."

Insert: "or"

Strike: "or D"

3. Page 23, line 23.

Strike: "New Section. Section 20." in its entirety

4. Page 24, line 6.

Following: "Class A."

Insert: "or"

Strike: "or D"

5. Page 24, line 17.

Following: "Class A."

Insert: "or"

Strike: "or D"

6. Page 24, line 21.

Following: "Class A."

Insert: "or"

Strike: "or D"

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
Telephone: (406) 449-3007 or 449-3008

Thomas Schneider, Chairman
John Driscoll
Howard Ellis
Clyde Jarvis
Danny Oberg

PROPOSED AMENDMENT TO SENATE BILL NO. 436
(INTRODUCED BILL COPY)

1. RE: Bill page 7, line 2 "NEW SECTION. Section 3. Fees."

Page 7, line 3

Following: "commission"

Insert: ", except those fees set by federal law,"

2. Explanation of Proposed Amendment

Federal law presently provides the maximum fees that states can assess motor carriers for registration of interstate authorities and purchase of vehicle identification stamps. Montana and the majority of other states assess the maximum fee provided by law. The Vehicle Identification Stamp fee applies to all vehicles used by regulated carriers, whether those carriers are based in Montana or not. To date, the Commission has sold in excess of 155,000 1983 vehicle identification stamps at \$5.00 per stamp. Approximately 90 to 95% of the carriers ordering stamps are based outside of Montana.

2/19/83

EXHIBIT NO. PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
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Danny Oberg

SENATE BILL 436

PAGE 18 BEGINNING LINE 25

STATEMENT OF SUPPORT BY THE MONTANA PUBLIC SERVICE COMMISSION

This section of Senate Bill 436 proposes to allow local governments the same contracting rights as now possessed by the federal and state governments. Under existing statute, any carrier who has a contract for transporting any commodity for the United States government or a contract for the transportation for solid waste with any state agency can present that contract to the Public Service Commission and receive a certificate for the duration of the contract. This bill would allow local governments to also issue contracts for the transportation of solid waste and allow the PSC to issue a certificate based on that contract.

The Public Service Commission supports this legislation for the following reasons:

1. Review by two governmental bodies (local governments and the Public Service Commission) of the carriers ability to transport solid waste is both unnecessary and costly to the State of Montana. Once a local government entity (city, county, or district) has advertised for bids based upon their specifications and have awarded a contract for the transportation movement of solid waste, further review by the Public Service Commission is not only unnecessary, but may result in an overturning of the bid process based upon the present statutes, therefore resulting in a higher cost to the consumers in the area.
2. Local governments are in a much better position to monitor the service provided by the contractors and to take corrective action if they feel it is needed for the protection of the health and welfare of their constituents.
3. It should be noted that any certificate issued under this legislation will expire at the end of the contract period and that present carriers are protected under 7-13-4107 MCA which states that existing carriers must be given five years notice or paid fair market value for their equipment if the community elects to provide exclusive garbage or solid waste service.

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Danny Oberg

SENATE BILL 436

69-14-115 Page 25 Beginning Line 1
69-14-116 Page 25 Beginning Line 21

STATEMENT OF OPPOSITION BY THE MONTANA PUBLIC SERVICE COMMISSION

The Montana Public Service Commission opposes the language in Senate Bill 436 which makes enforcement of railroad safety laws in Montana permissive rather than mandatory. The Commission feels that the State of Montana needs to have its own rail inspector, some of the reasons for this include:

1. There are safety and sanitary conditions set out by the Montana statutes that Federal inspectors have no jurisdiction over. (ie: Conditions inside cabooses.)
2. The priorities that the State of Montana has for track inspections may differ from that of the Federal Government. At the present time the State has no say in what lines should be inspected or how often the inspections should be made. (ie: The State of Montana may have a priority of maintaining conditions on branch lines to see that adequate service is provided.)
3. The Commission has in the past legislative sessions been on record requesting a rail inspector position from this legislature, and is again this year requesting a position through our budget process.

It is the Commission's opinion that rail safety is important to the State of Montana and that all efforts to institute a rail inspection program should be taken. We urge you to strike the proposed language in these two statutes and support the Commission in our effort to obtain funding for a State Rail Inspector.

MONTANA PUBLIC SERVICE COMMISSION SUMMARY
OF THE
LEGISLATIVE AUDIT COMMITTEE BILL
SENATE BILL NO. 436

1. Re: Sunset Provision (Page 2, Beginning Line 11).

The bill amends MCA §2-3-103(1) (g) "Agencies to terminate" by removing the reference to the "Public Service Commission, Department of Public Service Regulation" and redesignating the sequence in subsection (3), and inserting a new subsection (6) that states the "Public Service Commission, Department of Public Service Regulation" will terminate on July 1, 1989.

COMMISSION: Support.

2. Re: Fees Charged By Commission (Page 7, Beginning Line 2).

A new section is added that will require all fees charged by the Commission to be commensurate with the costs incurred in administering the function for which the fee is being charged.

COMMISSION: Support with amendment.

"except those fees set by federal statute."

3. Re: Effective Date for MCA Title 69, Chapter 7 "Municipal Utilities" (Page 7, Beginning Line 7).

Chapter 7 was originally passed by the Legislature as a temporary Chapter to be terminated July 1, 1983. The termination date has been eliminated so Chapter 7 becomes permanent. (This chapter concerns the partial deregulation of municipal utility services.)

COMMISSION: Neutral.

4. Re: Removal of county water/sewer districts and privately owned water/sewer associations from "public utility" definition (Page 8, Beginning Line 5).

MCA §69-3-101 "Meaning of public utility" is renumbered to provide for a new subsection(2) which defines a public utility as not including county or consolidated city and county water/sewer districts as defined in MCA Title 7, Chapter 13, or privately-owned and operated water/sewer systems which do not serve the public, e.g. water associations.

COMMISSION: Support. Proposed language clarifies Commission's regulatory jurisdiction over water and sewer service entities which have been the subject of litigation.

5. Re: Amendments to MCA §69-3-204 "Fees to be charged by Commission." (Page 8, Beginning Line 12).

Subsection(1) of MCA §69-3-204 is amended to allow the Commission discretion in determining whether to charge fees for filing annual reports, schedules and supplements, to add filing of applications to what fees can be charged for, and to eliminate (a) through (d) of the subsection that provides a specific fee schedule. Language requiring commission to charge fees for copies of orders, and other instruments is eliminated.

COMMISSION: Support.

6. Re: Amendments to MCA §69-3-304 "Temporary approval of rate increases" (Page 9, Beginning Line 9).

Amendments would allow the Commission to also temporarily approve rate decreases pending a rate application hearing or the Commission's final decision on a rate application.

If the Commission's final decision is to disapprove the temporary rate decrease, the Commission has the discretion to order all consumers to pay a surcharge for the amount that was not collected retroactive to the date of the temporary approval.

The Commission is also granted the discretion to order that interest, as determined by the Commission, be assessed on the surcharge. (MCA §69-3-302, provides that the PSC can assess an annual interest rate of 10% on rebates; Senate Bill No. 305 proposes to amend MCA §69-3-302 to allow the Commission to determine the annual interest rate, and to assess interest on both rebates and surcharges.)

Also provides that the Commission's decision to approve or deny a temporary rate decrease is an intermediate agency action, and a party may seek judicial review of that action under the Montana Administrative Procedure Act.

COMMISSION: Support.

7. Re: Clarifying Amendments to Title 69, Chapter 7 "Municipal Utilities" (Page 9, Beginning Line 25).

(A) Amends MCA §69-7-101 "Municipal-utilities regulation by municipality-limitation," to clarify that the phrase "annual revenues" for purposes of Chapter 7, means any consecutive 12 month period. (Page 10, Beginning Line 14).

COMMISSION: Support if Commission's regulatory jurisdiction is retained.

(B)Amends MCA §69-7-102 "Rate increases over maximum" to provide that if the Commission issues a final order concerning a municipality's rates, the municipality is prevented from increasing its rates for a period of 12 months following the Commission's order. A municipality may increase rates during such a

12 month period, however, if the increases are required to finance the local government's share for mandated federal or state capital improvements. (Page 11, Beginning Line 1).

COMMISSION: Support if Commission's regulatory jurisdiction is retained.

(C) Removes requirement in MCA §69-7-111 "Municipal Rate Hearing" that a municipality must mail notice of rate hearing by sending the notice with the monthly bill for utility services; municipality still required to mail notices no more than 30 days prior to the rate hearing. (Page 11, Beginning Line 24).

Provides that notice of rate hearing contain an estimate of customer's average bill thereby removing requirement that estimate must be of a "monthly" bill. (Page 11, Beginning Line 24).

COMMISSION: Neutral.

8. Amendments to subsection(3) of MCA §69-12-311, 312, 313
Re: Motor carrier certificate Application filing fee.
(69-12-311: Page 13, Beginning Line 20; 69-12-312: Page 15, Beginning Line 5; and 69-12-313: Page 16, Beginning line 20.)

Subsection (3) in MCA §69-12-311, §69-12-312, and §69-12-313 is amended to allow the Commission to set filing fees for Class A, B, and C motor carrier certificate applications and removes specific language re: amount of fee and requirement that filing fee be determined by number of counties for which certificate is requested. These amendments will be consistent with proposed language of MCA §69-12-423 "Fees to charged by Commission."

COMMISSION: Support.

9. Amendment to MCA §69-12-313(1) "Class C motor carrier certificate. (Page 15, Beginning Line 14).

Subsection (1) in MCA §69-12-313 is amended to specifically refer to MCA §69-12-324 "Special provisions when federal or state contract involved.", rather than having the contract exception language of MCA §69-12-324 contained in Subsection (1).

COMMISSION: Support.

10. Amendment to MCA §69-12-321(1) "Hearing on Application for motor carrier certificate." (Page 17, Beginning Line 13).

Subsection(1) is amended to simply refer to MCA §69-12-324 concerning Class C carriers who have contracts with a government department or agency, rather than having the contract exception language of MCA §69-12-324 contained in the Subsection (1).

COMMISSION: Support.

11. Amendments to MCA §69-12-324 "Special provisions when federal or state contract involved." (Page 18, Beginning Line 25).

Subsection(1) is revised to more clearly define a transportation movement for the purposes of this section: If a federal government contract is involved, the transportation movement must involve for hire movement of people or commodities. If a state or local government contract is involved, the transportation movement must involve the transportation of solid waste.

Subsection(1)(2) and (3) are amended to include "local government contracts."

COMMISSION: Support. Please see attached Statement of Support.

12. Amendment to MCA §69-12-406 "Restriction on transportation of certain waste." (Page 20, Beginning Line 23).

New language is added to refer to the exception in MCA §69-12-324 that would allow Class A, B, or C carriers to transport solid waste under a state or local government contract.

COMMISSION: Support. Proposed language is consistent with changes sought in Section 69-12-324 (See No. 11 above).

13. Amendments to MCA §69-12-421 "Annual fee for motor carriers." (Page 21, Beginning Line 10).

Subsection(1) is amended to change the dates by which motor carriers must pay their annual fees to the Commission from "on or between January 1 and January 15" to "on or between October 1 and the immediately following January 31."

Subsection (1) is also amended to remove language requiring the annual fee to be \$5.00, and adding new language to allow the Commission to set the annual fee.

COMMISSION: Support. Proposed language is to bring filing dates into conformity with federal statutes. Language to allow Commission to set the annual fee is consistent with proposed language of MCA §69-12-423 "Fees to be charged by Commission."

14. Amendments to MCA §69-12-423 "Fees to be charged by Commission." (Page 22, Beginning Line 4).

Subsection(1) is amended to grant the Commission discretion in determining whether to charge fees for sales and leases of motor carrier certificates, public convenience and necessity applications, schedules and supplements. Language requiring the Commission to charge fees for copies of orders and other documents/instruments and (a) through (e) of the subsection that provided a fee schedule, are eliminated.

COMMISSION: Support with amendment to provide "except those fees which are set by federal statute."

15. Amendments to MCA §69-12-501 "Rate schedules to be maintained." (Page 23, Beginning Line 6).

Adds Class D motor carriers on the assumption that the Legislature will adopt other legislation requiring Class D carriers to be rate regulated by the Commission. Language is added to clarify that the service rates charged by Class D carriers on January 1, 1983, will be grandfathered and serve as the lawful rates until changed by the rate procedures allowed in Chapter 12.

COMMISSION: Neutral.

16. Amendments to MCA §69-12-502 "Prohibition on deviation from rate schedules." (Page 24, Beginning Line 6).

Language to include Class D carriers is added for consistency with MCA §69-12-501 on the assumption that these carriers will be rate regulated.

COMMISSION: Neutral. Proposed language provides consistency with Section 69-12-501, MCA (See No. 15 above).

17. Amendment to MCA §69-14-115 "Investigation, enforcement and report concerning railroad safety laws." (Page 25, Beginning Line 2).

Commission enforcement of railroad safety laws is made permissive by the amendment to strike "shall" and insert "may".

COMMISSION: Oppose. Please see attached Statement of Opposition.

18. Amendment to MCA §69-14-116 "General protection of health and safety on railroads." (Page 25, Beginning Line 22).

Commission regulation of health and safety standards on railroads is made permissive by subsection(1), with the amendment to strike "shall" and insert "may".

COMMISSION: Oppose. Please see attached Statement of Opposition.

19. Amendments to MCA §69-14-202 "Duty to furnish shipping and passenger facilities." (Page 26, Beginning Line 16).

Subsection(1) and (2) are amended to provide that if a railroad maintains and staffs facilities for the shipment and delivery of freight and/or accomodation of passengers, the railroad cannot discontinue or remove any agency, i.e. the station agent, or any station facility without a public hearing before the Commission.

Language is deleted that required railroads to maintain staff and facilities when they were located in cities or towns with populations (according to the most recent U.S. Census) of not less than 1,000.

Now reads:

"69-14-202. DUTY TO FURNISH SHIPPING AND PASSENGER FACILITIES. (1) Every person, corporation, or association operating a rialroad in the state shall maintain and staff facilities for shipment and delivery of freight and SHALL ship and deliver freight and accomodate passengers in at least one location, preferably the county seat, in each county throughout which the line of the railway passes and at any point upon the line of such railway where there is a city or town having a population, according to the last federal census, of not less than

Will read as amended:

"69-14-202 DUTY TO FURNISH SHIPPING AND PASSENGER FACILITIES. (1) Every person, corporation or association operating a railroad in the state WHICH MAINTAINS AND STAFFS facilities for shipment and delivery of freight and WHICH SHIPS AND DELIVERS FREIGHT AND ACCOMODATES PASSENGERS MAY NOT DISCONTINUE any facility presently established in any city, town or other location without a hearing before the Public Service Commission, as provided by law . . ."

EXECUTIVE SUMMARY

Interest has recently focused upon a certain provision of the Montana Code Annotated which requires that railroads operating in Montana must provide shipping and passenger facilities under certain circumstances. The question has arisen as to whether this state statutory provision could present constitutional problems. This report examines the statute from a constitutional perspective. The state statute is evaluated in the context of the commerce clause of the Constitution. The report examines whether the statute interferes with interstate commerce in a manner which is prohibited by the commerce clause and if the statute does not interfere with interstate commerce, then, whether Congress, pursuant to legislative authority under the commerce clause, pre-empted the field of railway regulation by the enactment of the Interstate Commerce Act. In determining whether the Montana statute conflicts with the commerce clause, relevant caselaw was examined and compared to the statute. From our examination, it appears that the statute under consideration is a valid utilization of the state police power.

The doctrine of federal preemption--which requires that federal law overrides any state regulation when there is a conflict between the two--is examined in this report. The report examines the Montana statute for possible preemption by federal law. Federal preemption in the area of law dealing with railroad regulation is examined in detail. The federal statute in question is considered and its legislative history is examined. Relevant ICC administrative interpretations are reviewed for guidance as to the federal statute and its relationship to state law. The so-called Boston Terminal doctrine is examined and is applied to the Montana statute under evaluation. Judicial determinations made subsequent to the Boston Terminal cases are examined and their modifications to the doctrine are discussed.

The report concludes that the Montana statute is probably able to withstand a judicial challenge. While this report cannot anticipate a judicial determination, it appears that a strong argument can be made for the constitutionality of the Montana statute requiring the maintenance of rail facilities in certain circumstances upon the basis of the Boston Terminal rationale. However, a court may not elect to follow the ICC's reasoning and may reach a conclusion at variance with the Boston Terminal reasoning.



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THE CONSTITUTIONALITY OF MONTANA'S STATUTORY REQUIREMENT
TO FURNISH RAIL SHIPPING AND PASSENGER FACILITIES

Douglas Reid Weimer
Legislative Attorney
American Law Division
January 21, 1983

FORTINE, DEVON, LORING, WHITEWATER, WAGNER, DODSON, RICHEY,
LAMBERT, BROCKWAY, FRAZER, SACO, NASHUA, HINSDALE, ST. REGIS.

Cases pending disposition are:

CARTER, PORTAGE, BLET, POPLAR, KEVIN, SUNBURST, GALATA, DEVON,
LODGE GRASS, BIG TIMBER, BOZEMAN, MANHATTAN, BELGRADE, THREE
FORKS, HARRISON, WHITEHALL, TWIN BRIDGES, SHERIDAN, ALDER, TOSTON,
TRIDENT, TOWNSEND, EAST HELENA, and KALISPELL.

Pursuant to the Legislative Audit Committees decision to SUN SET the Commissions jurisdiction over station closings. Our members will be directly affected along with our rural communities. Sun Setting, or abolishing Commission jurisdiction over railroad stations will give Burlington Northern CARTE BLANCHE authority to close all stations in Montana.

In 1925, pursuant to the Interstate Commerce Commissions decision in 94 I.C.C. 691 held that:

"We (ICC) found that we lacked jurisdiction over the proposed retirement of a freight and passenger depot." (Cited also in BOSTON TERMINAL CO. REORGANIZATION Finance Docket No. 12625 at p-378 December 15, 1960)

In the Boston Terminal case cited above the I.C.C. stated:

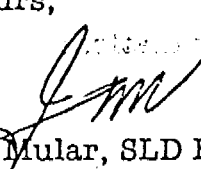
"The Congress has been fully aware that the abandonment of stations is ordinarily a matter wholly with the jurisdiction of the State Regulatory bodies. Indeed as recently as 1968, the Congress made it clear that it did not wish to transfer such jurisdiction to the Interstate Commerce Commission. (H.Rept. No. 1922 85th Congress 2d Session p-12)"

If the Public Service Commissions' jurisdiction is abolished as recommended by the Legislative Audit Committee, a subsequent repeal by implication will be granted to Burlington Northern. Submitting all of our cities, towns etc. to losing vital rail transportation facilities.

Our organization strongly opposes the loss of state jurisdiction. In as much as our members will be re-located to other states located on BN's 29 state network. Tremendous economic impacts would result in our rural and branch line communities.

We humbly seek your support in the 1983 legislative session in retaining the present law.

Truly Yours,


James T. Mular, SLD BRAC

cy: to all Montana members.



BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

440 Roosevelt Drive RR 1

AFL-CIO-CLC
ARTCRAFT, BUTTE

JAMES T. MULAR
State Director
Butte, MT 59701
Phone 406-494-2316

TO:

SUBJ: LEGISLATIVE AUDIT COMMITTEES DECISION TO SUN SET THE
PUBLIC SERVICE COMMISSIONS AUTHORITY OVER RAILROAD
STATION FACILITY CLOSURES (Section 69-14-202 MCA and RAIL
EMPLOYEE SAFETY LAWS.

DEAR

From December 1981, thru December 1982, the following station closures, and
facility removals were requested by Burlington Northern Railroad Company (BN-RC).

TROY, FORTUNE, BROWNING, ST. REGIS, CHOTEAU, CARTER, PORTAGE, BELT,
DARBY, KEVIN, SUNBURST, GALATA, DEVON, LORING, WHITEWATER
WAGNER, DODSON, POPLAR, KALISPELL, WIBAUX, LODGE GRASS, BRIDGER,
BROADVIEW, RAPELJE, COLUMBUS, BIG TIMBER, BOZEMAN, BELGRADE,
MANHATTAN, THREE FORKS, HARRISON, EAST HELENA, PHILLIPSBURG,
FRAZER, SACO, NASHUA, AND HINSDALE, MONTANA.
RICHEY, LAMBERT, FAIRVIEW, BROCKWAY, CIRCLE, TERRY, WHITEHALL,
TWIN BRIDGES, SHERIDAN, ALDER, TRIDENT, TOSTON, and TOWNSEND. A
total of fifty stations.....

Presently the Montana Public Service Commission has jurisdiction over the main-
tenance and staffing of railroad facilities. (Section 69-14-202 M.C.A.) Railroads doing
business in Montana must maintain and staff station facilities in communities of a
1,000 or more inhabitants, and at least one station facility in each county where they
operate. Preferably the County Seat. The foregoing stations that did not meet the
thousand population criterion, became vulnerable to closure.

Pursuant to Montana law, the Commission ordered the following stations remain
open: (Sec. 69-14-202 MCA)

TROY (over 1M pop) BROWNING (over 1M pop) CHOTEAU (over 1M pop & County
Seat) FAIRVIEW (over 1M pop) CIRCLE (County Seat) TERRY (County Seat)
BIG TIMBER (over 1M pop & County Seat) WIBAUX (County Seat) WHITEHALL
(Last Station in Jefferson City) COLUMBUS (over 1M pop & county seat)
PHILLIPSBURG (Granite County seat over 1M pop) BRIDGER (last station in
Carbon County)

Stations ordered to remain open with less than one thousand population:

FALLON (remain open during sugar beet harvest 6 weeks)
DARBY (BN withdrew application requesting dismissal)

Stations ordered closed with less than 1,000 inhabitants:

(more reverse side)

AMENDMENT TO
SENATE BILL 436

On page 9, strike lines 9 through 24 in their entirety and insert:

69-3-304. Temporary Approval of Rate Increases. The commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision.

(1) If a temporary increase has been granted by the PSC, and the final decision of the PSC disapproves the increase, in whole or in part, the Commission shall order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval together with a reasonable rate of interest thereon.

(2) A temporary rate decrease can be granted only as a part of a complaint proceeding pursuant to 69-3-321 and 69-3-324 to finally decrease rates. If a temporary decrease has been granted by the PSC and the final decision of the PSC disapproves the decrease, in whole or in part, the commission shall order a surcharge upon existing rates designed to recover for the utility, over a period not to exceed one year, the revenues undercollected as a result of the temporary decrease order.

(3) A party seeking a temporary rate decrease shall make application to the PSC for an order requiring the affected utility to show cause on a day certain, and upon at least thirty days notice, why the temporary rate decrease should not be granted. If the relief sought by the complaining party could affect the interest of parties other than the affected utility the PSC shall also give at least thirty days notice of the application for a temporary rate decrease to such affected parties. The party making the application for a temporary rate decrease must make a prima facie showing of entitlement to the relief requested, in its application, and the PSC shall not issue a show cause order unless such showing is made.

SUBMITTED BY: J. W. Hyre, Mountain Bell
EXHIBIT NO. 7
2/19/83

SENATE BILL 436 / PROPOSED AMENDMENT
(MOUNTAIN BELL.)

PAGE 9 line 19

commission ~~MAY~~ shall order interest to be paid....

PAGE 9 line 22

decrease shall be based upon identical standards and shall
be an intermediate agency action subject to ...

COMMISSION: Neutral. The Commission has enforced this Section and refused to allow a railroad to close any station facilities when the station was the last one in a county or was located in a city or town with a population not less than 1,000.

The Burlington Northern Railroad Company has sued the Commission in federal district court concerning the constitutionality of the Section. Since the Section is one that the Commission must enforce, the Commission has argued in the suit that the Section is constitutional. There has been no decision in the case as of February 19, 1983.

Commission will abide by the Legislature's policy determination on whether or not to remove the population and last station in the county requirements.

4. It should be pointed out that the Public Service Commission would still maintain, under this procedure, jurisdiction over insurance and vehicle safety and the PSC would assist local governments in all vehicle safety related matters.

Again let me state that it is the position of the Montana Public Service Commission that once a local government has advertised, accepted bids and made a decision on who to use to transport solid waste in their area, through the awarding of a contract, a presentation of that contract to the Commission should be enough evidence for the Commission to grant a certificate without further review by the PSC.

Montana Public Service Commission urges you to support this section of Senate Bill 436 as a means of reducing the bureaucracy and review by two governmental agencies of a bonafide contract between a local government and a person who wishes to transport solid waste and to give to the local government the ability to decide which carriers would best serve their constituents.

the right to choose, "WHICH STATION DO WE WANT TO MAINTAIN AND STAFF IF ANY??" The statute in its amended form no longer compels railroads to perform a specific public service, because the language deleted from the present law, "SHALL SHIP AND DELIVER FREIGHT" is no longer law. (After all, a railroad is a common carrier of freight). The amendments imply that if a railroad wants to ship and deliver freight it will. There are no provisions requiring the railroads to submit a list of their maintained and staffed facilities located in this state. Arguably they could allege that none of their stations and facilities are used for delivery and shipping purposes.

With the deletion of Section 2 of the present law, compelling public hearings, the Legislative Audit Committee has inserted the words, "MAY NOT DISCONTINUE any facility without hearing." The word MAY is non-compelling, because the railroads could assert in their applications that they do not ship or deliver freight at those facilities. Which would in fact, deny public hearings.

Our organization alleges that the Legislative Auditor did not in fact research the legislative background of the present statute. Nor ~~did~~ the Interstate Commerce's 1925 case (94-ICC-691) wherein the ICC held that the states had jurisdiction over station abandonments. This precedent has been upheld in all cases regarding state station closures. Congress has been reluctant to give the ICC authority or jurisdiction over railroad stations, and facilities. (H.Rept. No. 1922, 85th Congress, 2nd session, p.12)

LEGISLATIVE BACKGROUND

for closing. Two of them are located on the U.P., two on the BAP and two on the Soo Line, leaving 40 stations left on the BN for abandonment consideration, and PSE applications.

(SOURCE OF OPEN STATIONS FROM OFFICIAL RAILROAD OPEN AND PREPAY STATION LIST, 1981.)

Service Date: January 18, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION
1227 11th Avenue, Helena, Montana 59620

Transportation Division

NOTICE OF RAIL APPLICATIONS FOR AUTHORITY

Burlington Northern Railroad Company, 176 East 5th Street, St. Paul, Minnesota 55101, has filed the following applications with this Commission.

Docket T-6952

Application to consolidate Opheim and Glentana, Montana dualized agency, its Richland and Peerless, Montana dualized agency, and the agency at Four Buttes with Applicant's agency at Scobey, Montana.

Docket T-6954

Application to consolidate Froid and Homestead, Montana dualized agency, Medicine Lake, Reserve and Antelope, Montana trialized agency, and Redstone and Flaxville, Montana dualized agency with Applicant's agency at Plentywood, Montana.

CAPTIONED SUMMARY OF APPLICATIONS IS ATTACHED

The petitions may be granted unless protests and/or requests for public hearing are received.

Shippers and receivers must mail their written protests and/or requests to the Public Service Commission on or before February 27, 1983.

Copies of the petitions for consolidation and abandonment are available from the offices of Burlington Northern Railroad Company, Suite 1003, First Northwestern Bank Center, Billings, Montana 59101, or may be inspected at the Public Service Commission offices, 1227 11th Avenue, Helena, Montana 59620, during the regular working day.

Montana Consumer Counsel, 34 West Sixth, Helena, Montana 59620, 449-2771, is available to assist the shipping public in these matters.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

THOMAS J. SCHNEIDER, CHAIRMAN

HOWARD L. ELLIS, COMMISSIONER

CLYDE JARVIS, COMMISSIONER

JOHN B. DRISCOLL, COMMISSIONER

DANNY OBERG, COMMISSIONER

DOCKET T-6952

Burlington Northern Railroad Company has filed a petition with the Montana Public Service Commission for authority to consolidate its Opheim and Glentana, Montana dualized agency, its Richland and Peerless, Montana dualized agency and the agency at Four Buttes, Montana station with Applicant's agency at Scobey, Montana.

Applicant states that in an effort to reduce the cost of transportation services and improve productivity, Applicant seeks to consolidate the above-described agency operations at Scobey, Montana. Applicant states that the needs of the shipping public can be adequately served through Applicant's Scobey, Montana agency. Applicant further states that no patron would be required to travel to Scobey to conduct its business with Applicant, as Applicant will establish toll-free telephone service for Applicant's patrons and will make suitable arrangements for the execution of bills of lading. Applicant states that there will be no discontinuance or interruption of Applicant's train service to its patrons being served by the above-named agencies.

Applicant further requests authority to sell, remove, or otherwise dispose of the facilities at the agencies which Applicant seeks to consolidate with its Scobey, Montana agency.

DOCKET T-6954

Burlington Northern Railroad Company has filed a petition with the Montana Public Service Commission for authority to consolidate its Froid and Homestead, Montana dualized agency, its Medicine Lake, Reserve and Antelope dualized agency, and its Redstone and Flaxville dualized agency with Applicant's Agency at Plentywood, Montana.

Applicant states that in an effort to reduce the cost of transportation services and improve productivity, Applicant seeks to consolidate the above-described agency operations at Plentywood, Montana. Applicant states that the needs of the shipping public can be adequately served through Applicant's Plentywood, Montana agency. Applicant states that no patron would be required to travel to Plentywood to conduct its business with Applicant, as Applicant will establish toll-free telephone service for Applicant's patrons and will make suitable arrangements for the execution of bills of lading. Applicant further states that there will be no discontinuance or interruption of Applicant's train service to its patrons being served by the above-named agencies.

Applicant further requests authority to sell, remove, or otherwise dispose of the facilities at the agencies which Applicant seeks to consolidate with its Plentywood, Montana agency.

DEPARTMENT OF PUBLIC SERVICE REGULATION

MONTANA PUBLIC SERVICE COMMISSION

APPLICATION TO ESTABLISH A) NO. _____
CENTRALIZED CUSTOMER SERVICE)
- CENTER AT HAVRE, MONTANA.) PETITION

COMES NOW Applicant, Burlington Northern Railroad Company, and files this its Application to Establish a Centralized Customer Service Center at Havre, Montana, and as grounds therefor would show the following:

I.

Applicant seeks authority to establish a Centralized Customer Service Center at Havre, Montana, to serve patrons at the stations and blind sidings of Havre, Laredo, Box Elder, Harlem, Savoy, Chinook, Zurick, Lohman, Big Sandy, Virgell, Lippard, Chappell, Kremlin, Gildford, Burnham, Fresno, Hingham, Rudyard, Inverness, Joplin, Chester, Beulow, and Tiber, Montana. These stations are currently being served by agencies at Havre, Harlem, Chinook, Big Sandy, Chappell, Chester, and the dualized agencies of Kremlin-Gildford, Hingham-Rudyard, and Inverness-Joplin, Montana, all of which Applicant proposes to discontinue, and to dispose of the depot buildings, except for Havre. Applicant would further show that the blind sidings of Hogeland and Turner are presently handled by the agency at Harlem, Montana, and Applicant proposes to assign these two blind sidings to the agency at Glasgow, Montana, for handling.

II.

As the basis for this proposal, Applicant would show that establishment of a Customer Service Center at Havre, Montana, will provide improved, more efficient, more economical service to the shipping public. The proposed Customer Service Center will offer increased hours of service to the public at a multi-employee, computer-assisted facility, which will, among other things, expedite car ordering and placement and will provide to the public direct and immediate access to the latest information concerning car location at no extra cost to the public. Applicant's patrons may contact the Customer Service Center direct via a toll-free telephone line, night and day, seven days a week. No patron will be required to travel to Havre to transact business with Applicant, and there will be adequate personnel at Havre to provide personal contact and service to applicant's patrons as needed.

III.

Applicant would further show that the establishment of the Customer Service Center at Havre, Montana, will provide a more efficient rail operation, increased productivity, and will assist in reducing Applicant's operating expenses which, of necessity, must eventually be borne by the shipping public.

WHEREFORE, premises considered, Applicant requests that its Application be granted and that Applicant be granted such other and further relief to which it may be justly entitled.

DATED this 24th day of January, 1983.

BURLINGTON NORTHERN RAILROAD COMPANY

By Kent Kooleen
K. KENT KOOLEEN
1003 First Northwestern Bank Center
Billings, Montana 59101
(406) 256-4454
Of Attorneys for Applicant

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 24 day of January, 1983, the foregoing Petition was duly served by mail upon the following-named individuals by placing a copy thereof this date in an envelope with postage prepaid and addressed to:

Montana Public Service Commission (original and 6)
1227 - 11th Avenue
Helena, Montana 59620

Montana Consumer Counsel
34 West Sixth Avenue
Helena, Montana 59620

Mr. James T. Mular
440 Roosevelt Drive - RR #1
Butte, Montana 59701

Russell D. Gulick

City of Cut Bank

113 East Main

Cut Bank, Montana 59427

STATEMENT by Joe Meagher, Mayor, Cut Bank, Montana, before the
Senate Business and Industry Committee, February 19, 1983.

RE: Senate Bill No. 436

Our problem is that applying to the Public Service Commission for
a rate increase is a very expensive and time consuming procedure.

We must engage accountants, engineers, and attorneys to properly
research, prepare and present our case.

In smaller cities, the cost of a rate hearing could approach the
annual increase in operating costs of the utility.

In 1982, we increased our water rates in Cut Bank by 12%. The paper
work required for this increase was very simple and inexpensive.

Except for preparing a few legal forms by our City Attorney, all
of the work was completed by our regular staff.

Cost to the City for this increase was under \$500.00.

For these reasons the City of Cut Bank supports Senate Bill 436.

Joe Meagher

I speak in support of S. Bill 436, especially those sections dealing with Municipal utilities.

The provision enacted last session has proven beneficial to Billings.

1. The close proximity of the local officials to the consumer provided more input for the policy maker, thus eliminating most protest. Local officials & staff have held informational meetings with senior citizens thus helping people understand why an increase is necessary. Information has been disseminated through news letters. At the last public hearing on a rate increase, no one appeared to protest.
2. Preparation costs, ~~both~~ ^{expense} in time & rate studies imposed by the PSC has been eliminated.
3. Local officials have become more informed & more involved in the utility department's requests.

Because I feel that the local officials are in a better position to understand the need for rate increases & also are in a better position to impart this information to the consumer, I urge your support.

Lucille Milles, Billings City Council Member

NAME: Alec Hansen DATE: 2-19-83

ADDRESS: 241 Anderson Blvd

PHONE: 443 7601 (home) 442-8768 (business)

REPRESENTING WHOM? Montana League of Cities and Towns

APPEARING ON WHICH PROPOSAL: SB-436

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: THE SECTIONS THAT RELATE TO MUNICIPAL UTILITY
DE-REGULATION ARE STRONGLY SUPPORTED BY ALL 121
MEMBERS OF THE LEAGUE. THIS BILL HAS WORKED WELL
IN PRACTICE. THE AUTHORITY TO INCREASE RATES 12% HAS
BEEN USED BY 72 COMMUNITIES, AND THE MINOR AND ISOLATED
PROBLEMS THAT HAVE COME UP ARE COVERED BY
THE AMENDMENTS ON PG 10 LINES 14 AND 15 - AND PG 11 LINES
1 THROUGH 7. THESE AMENDMENTS WERE SUGGESTED BY THE PSC,
AND AGREED TO BY THE CITIES TO ELIMINATE PROCEDURAL QUESTIONS
ON THE APPLICATION OF THIS AUTHORITY. THE BILL PASSED
IN 1981 WORKS - IT PROVIDES REASONABLE LOCAL CONTROL, PUBLIC
INVOLVEMENT IN THE DECISION PROCESS AND A METHOD OF
REASONABLE RATE ADJUSTMENT THAT WILL ALLOW CITY UTILITIES
TO PROVIDE SERVICES AT A FAIR COST.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME John G. PALAGI BILL NO. SB 436
ADDRESS 2820 5 Ave North DATE 2/19/83
WHOM DO YOU REPRESENT MONTANA SOLID WASTE CONTRACTORS ASSOC.
SUPPORT ✓ OPPOSE _____ AMEND 6 AMENDMENTS

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Regarding CLASS D -

HB. 73 HAS BEEN SUPPORTED by

THE PSC, THE MSWCA-, AND LOCAL
RESIDENCE of Lewistown, MT. I

THINK THE AMENDMENTS SHOULD BE
MADE BECAUSE HB. 73 WILL INTRODUCE
COMPETITION AS A FACTOR IN GRANTING
A LIC.

NAME Michael E. Zimmerman BILL NO. SB 436
ADDRESS 40 E Broadway Butte MT DATE Feb 1983
WHOM DO YOU REPRESENT Montana Power Co.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

§6, page 8, line 12 amends §69-3-204 to include authority to levy fees for filing "applications." MPO believes the cost of regulation should be covered through appropriation because regulation is properly a responsibility of government. This section should be amended.

Otherwise, MPO recognizes, regulation is an essential part of utility service. MPO supports the reestablishment of the PSC.

NAME Sandra Mentya BILL NO. SB 4136
ADDRESS Tewinstown, Mt. DATE 2-19-83
WHOM DO YOU REPRESENT self
SUPPORT _____ OPPOSE _____ AMEND X
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

On the rate regulation section in section 69-12-501. insert the wording in the area of 69-7-101 by allowing class D carriers the right of a rate increase the same as allowed cities without a costly rate hearing. If the increase is over 12% then a formal hearing will need to be held.

We support retaining the PSC but feel the above is an appropriate amendment at this time. I am sure if rate regulation is not handled in this session it will come up again next session.

We approve allowing Class D carriers their existing rates under rate regulation with a fair annual allowance for increases without a hearing.

DATE _____

COMMITTEE ON _____

BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bill Romine	solid waste Contractors Assn	SB 436	Amend & Support	
Opal Winekammer	Public Service Commission	SB 436	Support/Amend	
John PALAGI	Mont. Solid Waste Contractors	SB 438	AMEND to Support	
James T. Muller	Boo Rwy Clerks	SB 436	AMEND	X
LARRIS GULLICKSON	UNITED TRANSPORTATION UNION	SB 436	AMEND	X
Elmer Fowler Anderson	Bozeman City Commission	SB 436	Support	
Al Bales	Montana Chamber	SB 460		X
W. H. R. & J. W. H. GATES	MOUNTAIN BECC	SB 436	AMEND	
Renee Brereton	Montana State Adjutant Gen	SB 436 460	✓	
Esther Nelson	City of Billings		✓	
L. W. Miller	✓ - - -	SB 436	✓	
Ann Spack	Economic Development Council	SB 460		X
Ben Hardahl	Mont Motor Carriers Assn	SB 436	✓	
Bill BRASHER	MT RR ASSN	SB 436	✓	
D. W. Smith	- - -	-	-	
SB Brown	" " "	" "	Amend	
Paul H. Pestario	State Rep.	SB 436		X
Al Larson	City of Great Falls	SB 436	X	
Mike Young	City of Missoula	SB 436	✓	
Bill Verwolf	City of Helena	SB 436	✓	
Leon Stalcup	City of Missoula	SB 436	X	
Danny Cheng	PSC	SB 436	X	
June Rain	Mont. Camera Comm.	SB 436	✓	
Don Reed	MEIC	SB 436	✓	

WITNESS STATEMENT

Name Bill Romine Committee On B & I
Address Helena Date 2-19-83
Representing Solid Waste Contractors Assoc Support X
Bill No. S.B. 436 Oppose _____
Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. the proposed amendments do two things:
 - (1). keep in existence the present law concerning cities & counties contracting with a private carrier.
this bill, without the amendment, would be similar to H.B. 186. This bill was fully heard & argued in the house & the bill was tabled.
 - (2). The second amendment addresses rate regulation. This is not necessary as a result of H.B. 73 which has passed the house & second reading in the senate. IT provides for competition and therefore rate regulation is unnecessary.
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

NAME Tom Schneider BILL NO. SB 436
ADDRESS 1227 11th Ave. DATE 2/19/83
WHOM DO YOU REPRESENT Montana PSC
SUPPORT ✓ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The Montana PSC has provided
a comprehensive summary of this
Audit Committee Bill which is presented
to the Committee.

NAME: OPAL WINEBRENNER DATE: 2-19-83

ADDRESS: 1227 11th Ave.

PHONE: 449-4782

REPRESENTING WHOM? Public Service Commission

APPEARING ON WHICH PROPOSAL: SB 436

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: See attached PSC Summary of SB 436

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME BILL BRASHER BILL NO. JB 436
ADDRESS 1001 1ST NW BANK CENTER DATE 2-19-83
WHOM DO YOU REPRESENT BN RR CO
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME: Ben Harvahl DATE: 2/19/83

ADDRESS: Helena

PHONE: _____

REPRESENTING WHOM? Montana Motor Carriers Assoc

APPEARING ON WHICH PROPOSAL: SB436

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Montana Motor Carriers Assoc supports the reestablishing

of the Mont. Public Service Commission and the continued regulation

of the intrastate motor carrier industry. MMCA does not

object to the PSC establishing fees for authority applications

filings, annual report fees, fees for tariffs, or the annual

fee assessed for motor carriers, now set by statute at \$5,00

per unit. We particularly support the New section, Section 3 on

page 7 of the bill that requires the "Fees charged by the Com-

mission must be commensurate with the costs incurred

in administering the function for which the fee is charged"

NAME John Albe BILL NO. 436

ADDRESS 406 Fuller DATE _____

WHOM DO YOU REPRESENT MD4

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME JAMES T. MULLAR BILL NO. SB 436
ADDRESS Butte MT DATE 2-19-83
WHOM DO YOU REPRESENT Rwy. Clerks
SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Delete amended provisions of SECTION
69-14-202 MCA - RESTORE THE
LANGUAGE OF THE PRESENT
LAW!

NAME MORRIS W. GULLICKSON BILL NO. SB 436

ADDRESS LIVINGSTON, MT. DATE 2/19

WHOM DO YOU REPRESENT UNITED TRANSPORTATION UNION

SUPPORT _____ OPPOSE X AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WE ~~OPPOSE~~ THE UNITED TRANSPORTATION UNION OPPOSE THE WHOLE BILL AND WOULD LIKE IT KILLED AND RETURN THE PSC AS IT IS.

IF THIS BILL PASSES WE WOULD LIKE TO SEE AN AMMENDMENT PAGE 25 - LINE 22 RETURNED TO SHALL HAVE FULL AUTHORITY INSTEAD OF MAY

THE UNITED TRANSPORTATION UNION REPRESENTS THE CONDUCTORS, TRAINMAN, SWITCHMAN, ENGINEERS, & FIREMAN WE WANT THE PSC TO HAVE FULL AUTHORITY IN ENFORCING THE SAFETY & HEALTH RULES AND NOT A MAY ENFORCE SITUATION. WE WORK UNDER THESE RULES AND WANT THEM ENFORCED.

WE HAVE HOPE FOR THE STATE TRACK INSPECTOR AS IT IS IN THE PSC BUDGET & THE GOVERNOR'S BUDGET. THIS MAN NEEDS FULL AUTHORITY, HE WILL INSPECT BRANCH LINES THAT THE FEDERAL RAILWAY AUTHORITY DOES NOT NOW - THE FRA IS UNDER STAFFED AND UNDER FUNDED AND CANNOT ADDRESS HEALTH & SAFETY BECAUSE OF THIS THEY BASICALLY WORK ON SAFETY OF ROLLING STOCK

NAME Dennis Lapach BILL NO. 436
ADDRESS Box 5124 Hubers DATE 2/19/83
WHOM DO YOU REPRESENT Northwestern Tel. Systems, Inc.
SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME JOE MEAGHER BILL NO. 436
ADDRESS CITY HALL COT BANK, ALA DATE 1-19-83
WHOM DO YOU REPRESENT CITY OF COT BANK
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Lucille Mills BILL NO. 436
ADDRESS 1908 9th. St. W Billings DATE 2-19-83
WHOM DO YOU REPRESENT City of Billings
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Anne Fowler Anderson BILL NO. SB 436

ADDRESS 1502 South Black DATE 2/19/83

WHOM DO YOU REPRESENT Bozeman City Commission and city manager

SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Nore Brenton BILL NO. 436 + 460
ADDRESS P.O. Box 423 DATE Feb 17
WHOM DO YOU REPRESENT Montana Senior Citizens Association
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 19, 1983

The Business and Industry Committee met in Executive Session on February 19, 1983, at 3:30 p.m. The meeting was called to order by Chairman Allen Kolstad in Room 405, State Capitol.

ROLL CALL: All members were present except for Senators Boylan, Goodover and Severson who were excused.

ACTION ON SENATE BILL 436: Staff Attorney Petesch explained the amendments to the committee.

Page 7, line 4, the subcommittee decided to adopt the Public Service Commission amendments and then put a cap of no more than \$500.

Senator Dover made the motion that the proposed amendment to Senate Bill 436 Be Adopted. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to SENATE BILL 436 BE ADOPTED.

Page 8, line 15, strike "applications". That would strike it for utilities but not carriers because one involves rate applications which would be enormously expensive.

Senator Dover made the motion that the proposed amendment to Senate Bill 436 Be Adopted. Senator Gage seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to SENATE BILL 436 BE ADOPTED.

Page 9, line 19, strike "may" and insert "shall".

Senator Dover made the motion that the proposed amendment to Senate Bill 436 Be Adopted. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to SENATE BILL 436 BE ADOPTED.

Page 9, line 22, following "be" insert "based on identical standards and shall be".

Senator Dover made the motion that the proposed amendment to Senate Bill 436 Be Adopted. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to SENATE BILL 436 BE ADOPTED.

On the Solid Waste Contractors amendments the subcommittee decided to adopt amendments 2-6.

Senator Regan asked what is the affect of that? Staff Attorney Petesch stated that does not allow the Public Service Commission to establish

rates for Class D motor carriers. The Public Service Commission agreed to that amendment.

Senator Regan asked the way the bill stands now hasn't the Public Service Commission given their blessing? Staff Attorney Petesch stated the other bill does. The affect may be to remove those sections from the bill.

Senator Lee stated there was no problem with the amendments 2-6.

Senator Lee made the motion that the proposed amendments 2-6 Be Adopted and allow Staff Attorney Petesch the option of striking language in the bill to conform. Senator Dover seconded the motion.

Senator Regan asked before you strike those sections you will check with the attorneys in the Public Service Commission. Staff Attorney Petesch stated yes.

The Committee voted unanimously, by voice vote, that the proposed amendments to SENATE BILL 436 BE ADOPTED.

Staff Attorney Petesch stated the subcommittee then decided on page 26, section 24, to reinsert the former language and strike 1,000 and insert 100.

Senator Lee stated this is the situation. The language proposed by Senator Blaylock allows total discretion to the Public Service Commission. In matters as important as the major form of transportation in the State should be decided by the Legislature. They first decided to strike this completely and go back to status quo, but the argument against it is that BN in their efficiency moves are trying to shut things down would in respect to this 1,000 population focus on less than 1,000. So to straighten that out they have come to 100. After you shut these areas down the chance of opening these up again are very slim. He does not think it should be up to the Public Service Commission to make that decision. Senator Dover stated he has to oppose this. The way transportation is going now and to keep it viable you are not going to be able to go by just the population of the town. You are going to have to go where the business is. We as legislators cannot sit here and legislate where it should be as we have to leave it up to the Public Service Commission.

Senator Regan stated she supports Senator Dover's position. It does say there will be proper hearings.

Senator Lee stated to think that at a certain time there is no business or very few businesses in a certain area to use a railroad and to say they will not use them in the future is near sighted. For us to come in here and strip the policies of the past is very near sighted. In ten years from now we are going to say if we only had the service we had twenty years ago. We do not have the problem we have today with our highways. When we pass this kind of legislation we are going to be limiting our options in the future. You cannot delegate this to the Public Service Commission.

Senator Fuller asked if you abandon a place what happens to the ownership of that land? Do they retain ownership? Senator Regan stated yes. Eileen Shore stated in some cases the railroads have purchased that land.

On the proposed amendment of changing 1,000 to 100, the Committee voted by Roll Call vote 3-4 so the motion failed.

Senator Lee made the motion that on page 26, line 13 through 27, we strike all the language. What they are doing is not addressing this section of the bill and maintain the status quo. Senator Fuller seconded the motion.

Senator Regan stated maybe we should read what is on page 6. There is a lawsuit pending and no decision has been reached yet. She suspects there won't be. The Audit Committee spent a great deal of time looking at this. We should accept this from them.

Senator Fuller asked is the motion to strike the entire section? Senator Dover stated it would then leave the law as it is.

The Committee voted by Roll Call Vote 4-3 to strike these sections.

Senator Lee made the motion that Senate Bill 436 As Amended Do Pass. Senator Dover seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 436 AS AMENDED DO PASS.

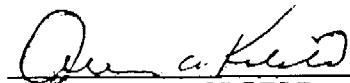
ACTION ON SENATE BILL 460: Senator Dover made the motion that Senate Bill 460 Do Not Pass.

Senator Lee stated he would agree with that but he would rather Table it.

Senator Dover withdrew his motion and made another motion to Table Senate Bill 460. Senator Fuller stated he was going to ask that we do this. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 460 BE TABLED.

ADJOURN: There being no further business, the meeting adjourned at 4:30 p.m.


ALLEN C. KOLSTAD, CHAIRMAN

STANDING COMMITTEE REPORT

February 19..... 1983.....

PRESIDENT

MR.

BUSINESS AND INDUSTRY

We, your committee on

having had under consideration **SENATE** Bill No. **436**.....

Respectfully report as follows: That..... **SENATE** Bill No. **436**.....
be amended as follows:

1. Title, line 15.

Following: "GOVERNMENTS;"

Strike: remainder of line 15 through "CARRIERS;" on line 16.

2. Title, line 18.

Strike: line 18 through "1,000;" on line 19.

3. Title, line 23.

Following: "69-12-423,"

Strike: "69-12-501, 69-12-502,"

Following: "69-14-115"

Insert: "AND"

4. Title, line 24.

Following: "69-14-116,"

Strike: "AND 69-14-202,"

XXXXXX

"STATEMENT OF INTENT ATTACHED"

CONTINUED

Chairman.

February 19

19..... 83

5. Page 7, line 4.

Insert: "except those fees set by federal statute. No fee set by the commission may exceed \$500."

6. Page 8, line 15.

Strike: "applications,"

7. Page 9, line 19.

Strike: "may"

Insert: "shall"

8. Page 9, line 22.

Following: "be"

Insert: "based on identical standards and shall be"

9. Page 23, line 3.

Strike: sections 19 through 21 in their entirety.

Renumber: subsequent sections.

10. Page 26, line 13.

Strike: section 24 in its entirety.

Renumber: subsequent sections.

AND AS AMENDED,

DO PASS

STATEMENT OF INTENT

A statement of intent is required for Senate Bill 436 because it grants the Public Service Commission authority to charge fees commensurate with costs.

The Legislature intends that the fees be set in an amount sufficient to provide funds to administer the function for which the fee is charged. Fees may not be set so high as to generate revenue in excess of expenses.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2/19/83 SENATE Bill No. 436 Time

NAME	YES	NO
PAUL F. BOYLAN		
B. F. CHRIS CHRISTIAENS	✓	
HAROLD L. DOVER		✓
DAVID FULLER	✓	
DELWYN GAGE		✓
PAT M. GOODOVER		
GARY P. LEE, VICE CHAIRMAN	✓	
PAT REGAN		✓
PAT M. SEVERSON		
ALLEN C. KOLSTAD, CHAIRMAN		✓

Mimi Fancher

Secretary

ALLEN C. KOLSTAD

Chairman

Motion: Amendment Changing 1,000 to 100

(Include enough information on motion -- put with yellow copy of committee report.)

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2/19/83 SENATE Bill No. 436 Time

NAME	YES	NO
PAUL F. BOYLAN		
B. F. CHRIS CHRISTIAENS	✓	
HAROLD L. DOVER		✓
DAVID FULLER	✓	
DELWYN GAGE		✓
PAT M. GOODOVER		
GARY P. LEE, VICE CHAIRMAN	✓	
PAT REGAN		✓
PAT M. SEVERSON		
ALLEN C. KOLSTAD, CHAIRMAN	✓	

Mimi Fancher
Secretary

ALLEN C. KOLSTAD
Chairman

Motion: Stute Section

(Include enough information on motion -- put with yellow copy of committee report.)